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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

April 18, 2008 - 9:05 a.m.
N.H. Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire

In re: SITE EVALUATION COMMITTEE:
Docket No. 2008-01: Public hearing
regarding the Joint Application
of Newington Energy, LLC (NEL) and
North American Energy Alliance, LLC
(NAEA) (Co-Applicants) for Approval of
Transfer of Membership Interests in NEL.

PRESENT: SITE EVALUATION COMMITTEE:
Thomas S. Burack, Cmsr. Dept. of Environmental Services
(Chairman of SEC - Presiding Officer)
Thomas B. Getz, Chrmn. Public Utilities Commission
(Vice Chairman of SEC)
Graham Morrison, Cmsr. Public Utilities Commission
Harry Stewart, Dir. DES - Water Division
Allison McLean, Dir. Division of Parks & Recreation
Amy Ignatius, Dir. Office of Energy & Planning
Philip Bryce, Dir. Div. of Forests & Lands (DRED)
Robert Scott, Dir. Air Resources Div. (DES)
Brook Dupee Dept. of Health & Human Services
Randall Knepper Public Utilities Commission

ALSO PRESENT: Michael Iacopino, Esq.
Counsel for the Committee

COURT REPORTER: STEVEN E. PATNAUDE, LCR No. 52

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APPEARANCES: Reptg. Newington Energy, LLC:
 Donald E. Pfundstein, Esq. (Gallagher..)
 Andrew Scher, Esq.

 Reptg. North American Energy Alliance:
 Barry Needleman, Esq. (McLane, Graf...)

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1 P R O C E E D I N G S

2 CHAIRMAN BURACK: Good morning, ladies
3 and gentlemen. My name is Tom Burack. I serve as the
4 Chairman of the Facility Site Evaluation Committee and as
5 Commissioner of the Department of Environmental Services.
6 I'm pleased to welcome you all here today for a public
7 meeting and hearing of the New Hampshire Site Evaluation
8 Committee. As many of you already know, this Committee is
9 established by RSA 162-H. The membership of this
10 Committee includes the Commissioners or Directors of a
11 number of state agencies, as well as specified key
12 personnel from various state agencies.

13 And, at this point, I would like to have
14 the members of the Committee introduce themselves,
15 starting on my far right.

16 MR. DUPEE: Good morning. My name is
17 Brook Dupee. I'm from the Department of Health & Human
18 Services.

19 DIR. SCOTT: Bob Scott, Department of
20 Environmental Services.

21 DIR. BRYCE: Phil Bryce, Department of
22 Resources & Economic Development.

23 DIR. STEWART: Harry Stewart, Water
24 Division, Department of Environmental Services.

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1 MR. IACOPINO: I'm Mike Iacopino, legal
2 counsel to the Committee.

3 CHAIRMAN BURACK: Again, Tom Burack.

4 VICE CHAIRMAN GETZ: I'm Tom Getz. I'm
5 Chairman of the Public Utilities Commission, Vice Chair of
6 this Committee. And, I'll note for the record that
7 Commissioner Morrison and I have designated Randy Knepper
8 as the engineer who will be participating in this hearing
9 on behalf of the Public Utilities Commission.

10 CMSR. MORRISON: Graham Morrison,
11 Commissioner of the Public Utilities Commission.

12 MR. KNEPPER: Randy Knepper, with the
13 Public Utilities Commission.

14 DIR. McLEAN: Allison McLean, with the
15 Department of Resources & Economic Development, Parks &
16 Recreation.

17 CHAIRMAN BURACK: I will note that we
18 were expecting one additional member of the Committee.
19 And, if that person joins us, we will have -- we will have
20 her introduce herself at that time.

21 The agenda for today's public meeting
22 includes two items. The first item, a hearing on the
23 merits of the Joint Application of Newington Energy, LLC
24 and North American Energy Alliance, LLC, for Approval of

1 Transfer of Membership Interests in Newington Energy, LLC.
2 The second item on today's agenda is a rulemaking
3 proceeding, in which we will ultimately consider and vote
4 on final organizational and procedural rules to be
5 transmitted to the Joint Legislative Committee on
6 Administrative Rules, also known as "JLCAR". And, at this
7 point we will proceed with our first agenda item.

8 In this Joint Application, Newington
9 Energy, LLC, also known as "NEL", and Northern American
10 Energy Alliance, LLC, known as "NAEA", the Co-Applicants,
11 seek approval from the Site Evaluation Committee to
12 transfer the membership interests in NEL from its current
13 parent company, known as CED/SCS, Newington, LLC, a
14 Delaware Limited Liability Company, to NAEA. NEL operates
15 a nominal 525 megawatt combined-cycle, dual fuel merchant
16 electric generation facility situated near the Piscataqua
17 River in Newington, New Hampshire, pursuant to a
18 Certificate of Site and Facility issued in Docket Number
19 98-01, effective May 25, 1999. The facility consists of
20 two GE 7FA combustion turbines, two heat recovery steam
21 generators with supplemental firing, and one steam turbine
22 in combined-cycle configuration. The facility has low NOx
23 burners and selective catalytic reduction for emissions
24 control. The primary fuel is natural gas and the

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1 secondary fuel is ultra-low sulfur diesel.

2 In addition to the site proper, the
3 facility includes a water supply pipeline and intake
4 structure in the Piscataqua River, and an electric
5 transmission line interconnecting the facility to the
6 substation at the Public Service of New Hampshire, "PSNH",
7 Newington Power Station. A natural gas pipeline runs from
8 the Portland Natural Gas Transmission System and Maritimes
9 Northeast, joint facilities, interconnection point to the
10 site to transport the primary fuel. An oil transfer
11 pipeline, which is owned by Sprague Energy, transmits the
12 alternate diesel oil fuel to the site. One above ground
13 diesel fuel storage tank, "AST", with one million gallons
14 of storage capacity is also located on site.

15 The proposed transferee, NAEA, is
16 ultimately owned by Industry Funds Management, Limited,
17 through two subsidiary companies. Subsequent to the
18 transfer of NEL to NAEA, the Co-Applicants submit that
19 day-to-day responsibility for facility operations will
20 continue to be handled by General Electric. General
21 Electric has operated the facility since the commercial
22 operation date of the facility in November 2002. At this
23 meeting the Site Evaluation Committee will review the
24 merits of the Joint Application and we may deliberate at

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1 the conclusion of the hearing. We will give the
2 Co-Applicants an opportunity to address the Committee and
3 allow the Committee members to ask questions of the
4 Applicants and their witnesses and representatives.

5 Notice of this meeting was published in
6 the Manchester Union Leader on March 28, 2008, in Foster's
7 Daily Democrat on March 26, 2008, and in the Portsmouth
8 Herald on March 27, 2008. The Co-Applicants filed an
9 affidavit of publication with the Committee on April 3,
10 2008, and that affidavit shall be a part of the record of
11 this proceeding.

12 Before we proceed any further, let me
13 introduce an additional member of the Committee. Why
14 don't you introduce yourself.

15 DIR. IGNATIUS: Good morning. I'm Amy
16 Ignatius, from the Office of Energy & Planning.

17 CHAIRMAN BURACK: Thank you for being
18 here this morning. I will note for the record that we
19 have a quorum here for this proceeding.

20 We will begin by allowing the
21 Co-Applicants an opportunity to present witnesses. I
22 understand that there will be three witnesses, and that
23 they will each adopt their prefiled testimony. The
24 witnesses will be permitted to supplement their prefiled

1 testimony as deemed necessary by counsel. The floor will
2 then be open to questions from the Committee and staff. I
3 have also been advised that the Co-Applicants have brought
4 additional representatives to this hearing. I understand
5 that these representatives are available, if necessary, to
6 supplement the information. It will important for each of
7 these representatives, if called upon, to identify
8 themselves by name and position for the record.

9 And, at this point, I would ask that the
10 witnesses, and supplemental personnel who may be called
11 upon to testify, stand to be sworn.

12 (Whereupon Michael Madia, Dunia Wright,
13 Michael Thompson, John McTear, John
14 Hartnett, Matthew Picardi, and Thomas
15 Favinger were duly sworn by Atty.
16 Iacopino.)

17 CHAIRMAN BURACK: Okay. We will now
18 turn to counsel for the Co-Applicants to make their
19 presentation.

20 MR. PFUNDSTEIN: Thank you, Mr.
21 Chairman. For the record, my name is Donald Pfundstein.
22 I am a lawyer at Gallagher, Callahan & Gartrell in
23 Concord. And, I have the pleasure of representing Con
24 Edison Development and its affiliate NEL. With me, to my

1 immediate left, is Mr. Michael Madia, who is the Vice
2 President and Chief Operating Officer of Con Edison
3 Development and NEL, and, to my far left, is Mr. Andrew
4 Scher, who is the Assistant General Counsel of
5 Consolidated Edison, and he also serves as General Counsel
6 to both Con Edison Development and NEL.

7 I would also ask that Mr. Needleman have
8 an opportunity at this point to introduce members of his
9 client who are here today. And, then, we would, with the
10 Chair's permission, very briefly examine Mr. Madia after
11 those introductions.

12 MR. NEEDLEMAN: Thank you, Don. Good
13 morning. My name is Barry Needleman, from McLane, Graf,
14 Raulerson & Middleton. I represent the Co-Applicant NAEA
15 in this proceeding. With me this morning is Dunia Wright,
16 from IFM. Dunia is the head of European and U.S.
17 operations for IFM, and she is based in New York. To
18 Dunia's right is Michael Thompson, also from IFM, based in
19 Melbourne, Australia. Michael is the Executive Director
20 for Infrastructure for IFM. Both of them submitted
21 prefiled testimony this morning, and you'll be hearing
22 from them regarding their testimony. To Michael's right
23 is John McTear. John is the recently appointed CEO of
24 NAEA. John has over 30 years of experience in the power

1 industry, including, from 2002 to 2007, serving as the
2 Vice President for Asset Management at Con Ed Development,
3 where one of his responsibilities was the Newington
4 facility. So, he has significant experience with the
5 facility at issue in this proceeding.

6 And, then, we have three other people
7 sitting behind us, who will offer support as necessary
8 during the proceeding. Two folks from Shell Energy North
9 America, John Hartnett and Matt Picardi. Shell Energy
10 will be doing the tolling arrangements at this facility.
11 And, then, also behind them, Tom Favinger. Tom is from
12 CPV, Competitive Power Ventures. And, they are listed in
13 the Application as an entity that will be providing
14 initial support to John and NAEA.

15 CHAIRMAN BURACK: Thank you. Mr.
16 Pfundstein.

17 MR. PFUNDSTEIN: Thank you, Mr.
18 Chairman. Since the primary focus of the Committee, of
19 course, is on the managerial, financial, and technical
20 capabilities of the proposed buyer, our examination of Mr.
21 Madia will be very brief. Perhaps someone could indicate
22 where we might offer the witness or --

23 CHAIRMAN BURACK: Right from the table
24 is fine.

[WITNESS: Madia]

1 MR. PFUNDSTEIN: That would be great.

2 MR. IACOPINO: We would just ask that
3 you make sure you speak into the microphone for the
4 benefit of the court reporter.

5 MR. MADIA: Yes, sir.

6 MR. PFUNDSTEIN: Mr. Madia, you have
7 already been sworn in this proceeding. And, I have a few
8 questions that I'd like to ask you.

9 (Whereupon Michael Madia was called as a
10 witness, having been previously sworn.)

11 MICHAEL MADIA, SWORN

12 DIRECT EXAMINATION

13 BY MR. PFUNDSTEIN:

14 Q. First, would you please state your name and business
15 address for the record.

16 A. Michael Madia, Con Edison Development, 111 Broadway,
17 New York, New York 10006.

18 Q. And, by whom are you currently employed and in what
19 capacity, Mr. Madia?

20 A. I'm employed by Consolidated Edison Development, Inc.,
21 it's a subsidiary of Con Edison, Inc., a large
22 investor-owned utility. I am the Vice President and
23 Chief Operating Officer of Con Edison Development and
24 of a number of the subsidiary entities of Con Edison

[WITNESS: Madia]

1 Development, including the Newington Energy, LLC
2 entity.

3 Q. And, are you, in that capacity, familiar with the NEL
4 facility?

5 A. Yes. I was involved in the early development, when the
6 site was just a green field location. So, I was
7 involved in early development, stayed with the project
8 through the permitting, through construction, and
9 operational and asset management period has continued
10 to report to me. So, I've had the asset really since
11 the initial certification was issued.

12 Q. Mr. Madia, I show you what has been marked as "Exhibit
13 1", "Petitioners' Exhibit 1", which purports to be the
14 Testimony of Michael Madia, on behalf of Newington
15 Energy, LLC, which I will represent to you was filed
16 with the Joint Application on January 14, 2008, and ask
17 you if you can identify that?

18 A. Yes. This is a copy of the prefiled testimony that I
19 prepared with Donald.

20 Q. Okay. And, did you believe it to be true and accurate
21 at the time it was filed?

22 A. Yes. It is true and accurate.

23 Q. And, would you like your prefiled testimony to be
24 admitted into evidence today as your testimony before

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[WITNESS: Madia]

1 the Committee?

2 A. Yes, please.

3 MR. PFUNDSTEIN: Mr. Chairman, we would
4 offer Petitioners' Exhibit 1 into evidence at this time.

5 CHAIRMAN BURACK: Thank you. It's
6 entered into evidence as "Petitioners' Exhibit 1". Thank
7 you.

8 (The document, as described, which was
9 premarked as Petitioners' Exhibit 1, was
10 admitted into evidence.)

11 BY MR. PFUNDSTEIN:

12 Q. Now, Mr. Madia, would you like to supplement or clarify
13 any portions of your prefiled testimony?

14 A. Yes. In reviewing the prefiled testimony, particularly
15 the environmental compliance section, on Page 5, Line
16 15, the compliance, with various conditions. I did
17 notice that the facility has received one fine
18 throughout its operational period. In order to
19 maintain the high reliability and environmental
20 compliance, this is a rather complex facility. So,
21 after testing a portion of the plant, known as the
22 "cooling towers", there was an anomaly or an excursion
23 in the test results. The plant did make corrections to
24 the plant. We realized that some components were not

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[WITNESS: Madia]

- 1 functioning properly. So, repairs were instituted and
2 the tests were passed. The total fine was \$5,175.
3 There's not been any other fines since that time. Any
4 other instances of component failure have been a result
5 of either incompatible chemistry or, again, the
6 complexity of the facility, and the operator and the
7 asset management function of my organization have
8 always taken corrective measures and instituted the
9 proper notices to state agencies.
- 10 Q. And, Mr. Madia, is all that detail contained in Data
11 Request Response Number 2?
- 12 A. Yes, Mr. Pfundstein.
- 13 Q. Okay. Would you like to clarify the prefiled testimony
14 with respect to the ownership of CED/SCS?
- 15 A. Yes. On Page 6, starting at Line 21, it states that an
16 entity called "CED/SCS" owned 100 percent of the plant.
17 SCS represents SCS Energy, which was a -- which is a
18 boutique developer. They helped us with the initial
19 location of the opportunity to build the project, and
20 had continued to be a minority partner. Early this
21 year we reached an agreement to take over their
22 ownership in the facility, so there's no minority
23 partner at this time.
- 24 Q. Okay. And, in fact, that change in ownership was

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[WITNESS: Madia]

1 reported to the Committee on February 11th, was it not?

2 A. Yes.

3 Q. Otherwise, Mr. Madia, do you adopt and reaffirm the
4 truth and accuracy of your prefiled testimony, which
5 has now been received in evidence?

6 A. Yes, I do.

7 Q. I have one final substantive question for you, Mr.
8 Madia. Would you briefly describe the entity
9 responsible for day-to-day operations of the facility?

10 A. Yes. General Electric is the day-to-day operations and
11 maintenance contractor of the facility. And, in
12 addition to the day-to-day operations, they also have a
13 long-term service agreement with NEL. So, the
14 combination of those arrangements ensure the owner that
15 the plant is well-maintained, well-operated. And, it's
16 served us, as Con Edison Development, very well to have
17 General Electric in that position. The technology is
18 their technology, they're General Electric turbines in
19 the plant. They have other facilities around the
20 country and around the world, so they are very
21 well-situated to operate this facility.

22 Q. Is there anything else you'd like to say at this time,
23 Mr. Madia?

24 A. I thank the Commission for hearing this application.

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[WITNESS: Madia]

1 This particular facility is part of a larger
2 transaction. We're very proud of this facility. It's
3 a complex facility, but it is an excellent facility.
4 It's flexible, engineered well. It provides reliable
5 clean energy to the state and to the region. We ask
6 that the Committee continue to give this application
7 expedited treatment, if possible. And, again, we thank
8 you very much for being here.

9 MR. PFUNDSTEIN: Mr. Chairman, Mr. Madia
10 would be happy to answer any questions the Committee or
11 staff might have.

12 CHAIRMAN BURACK: Very good. Thank you
13 very much, Mr. Madia. Are there questions for Mr. Madia?
14 Start with Ms. Ignatius.

15 DIR. IGNATIUS: Thank you.

16 BY DIR. IGNATIUS:

17 Q. I'm not sure, Mr. Madia, if you're the right person,
18 because the data response didn't seem sponsored by any
19 particular witness. So, if I've got the wrong person,
20 direct me to when later I should ask this. It was Data
21 Request Response Number 3, about the purchase price and
22 the allocation to real estate and other assets.

23 MR. PFUNDSTEIN: Actually, Director
24 Ignatius, I can provide the Committee an update on that

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[WITNESS: Madia]

1 data response. In Data Response 3, which were prepared by
2 the Co-Applicants and their advisors, we indicated that
3 the parties intended to meet with the Department of
4 Revenue Administration in an effort to reach a mutually
5 satisfactory arrangement with respect to the application
6 of the Real Estate Transfer Tax for the proposed
7 transaction. I'm very pleased to report that the parties
8 and DRA have reached an agreement on payment of that tax.
9 That the settlement or audit agreement has been drafted,
10 it has been circulated. I understand it is acceptable to
11 all parties, including the State, however, it has yet to
12 be executed. I have no reason to believe it won't be
13 executed very promptly. And, it will result in the
14 payment of \$2.55 million to the State upon the closing of
15 the transaction. So, that would be the update to Data
16 Response Number 3.

17 CHAIRMAN BURACK: Mr. Pfundstein, can
18 you clarify that?

19 DIR. IGNATIUS: Yes.

20 CHAIRMAN BURACK: The 2.55 million would
21 be for what? What tax or taxes?

22 MR. PFUNDSTEIN: It would be the Real
23 Estate Transfer Tax associated with the transaction.

24 DIR. IGNATIUS: And, Mr. Pfundstein, do

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[WITNESS: Madia]

1 you have a rough expectation of when it will be executed?

2 MR. PFUNDSTEIN: I believe it will be
3 executed within the next couple of days.

4 DIR. IGNATIUS: All right.

5 MR. PFUNDSTEIN: The only delay would be
6 associated with getting a piece of paper in front of the
7 appropriate individuals.

8 DIR. IGNATIUS: Thank you.

9 CHAIRMAN BURACK: Were there other
10 questions, Director Ignatius?

11 DIR. IGNATIUS: I guess just -- are
12 there any other outstanding, that was the only one I
13 noticed that was still working its way towards completion,
14 but are there other things that are still being negotiated
15 either among the parties or with the State or any of the
16 municipalities or regulatory entities that you have to
17 deal with?

18 MR. PFUNDSTEIN: Right. I mean,
19 obviously, the parties are still discussing various issues
20 associated with the proposed closings. We have no open
21 issues with the Town. And, in fact, I think you'll see in
22 the record that, by letter dated April 2nd, I remember
23 that because that's my birthday, the Town actually
24 submitted a letter saying that they supported the transfer

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[WITNESS: Madia]

1 -- supported approval of the transfer.

2 As far as other regulatory approvals are
3 concerned, I think they're all pretty much -- Mr. Madia
4 may have a better update.

5 BY THE WITNESS:

6 A. Yes. If I may, in terms of the other regulatory
7 approvals, we are -- the entire transaction has
8 received approval from the Securities & Exchange
9 Commission, it has received its Hart-Scott-Rodino
10 approval, it has the Federal Energy Regulatory
11 Commission Section 203 approval. We have approvals in
12 New Jersey, from the Department of Environmental
13 Protection under the Industrial Site Recovery Act. So,
14 other regulatory approvals for the overall transaction
15 have all been received. So, the parties now, as Mr.
16 Pfundstein mentioned, are just going through the final
17 closing conditions.

18 But, other than that, all other
19 approvals are in. The remaining items are more or less
20 notification stages.

21 DIR. IGNATIUS: Thank you.

22 CHAIRMAN BURACK: Thank you very much.

23 Mr. Getz.

24 VICE CHAIRMAN GETZ: I had one question

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[WITNESS: Madia]

1 for Mr. Madia.

2 BY VICE CHAIRMAN GETZ:

3 Q. With respect to the original cost, construction cost of
4 the project, it wasn't clear to me from reading the
5 original decision. But do you have the -- what that
6 cost was?

7 A. The cost had multiple components. Had what we call
8 "hard costs" for construction, where there was a base
9 engineering, permitting, construction contract. And
10 that, and some adders and some items that we -- that
11 Con Edison Development took on itself, outside of that
12 EPC contract, amounted to in the order of \$260, \$270
13 million. On top of that were financing, interest, and
14 other soft costs, which led to an original finance
15 amount in the \$355 million range. And, that was the
16 amount that was financed under the lease and is subject
17 to the existing mortgage and other documents filed with
18 the State.

19 VICE CHAIRMAN GETZ: Thank you.

20 CHAIRMAN BURACK: Are there other
21 questions? Attorney Iacopino.

22 MR. IACOPINO: Thank you.

23 BY MR. IACOPINO:

24 Q. Mr. Madia, there's some indication that the transferee

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[WITNESS: Madia]

1 of the proposed transaction will be operated pursuant
2 to tolling agreements. It's my understanding that the
3 plant has been operated by your company without -- not
4 through tolling arrangements, but through firm -- just
5 selling the power into the market, is that correct?

6 A. That is correct. And, that's a choice that any owner
7 of a merchant -- a typical merchant asset has. We have
8 as an affiliate an entity that does trade and market
9 regularly with the New England Independent System
10 Operator. So, the way we managed the facility was to,
11 at times, sell forward positions, when prices or fuel
12 conditions were right, we buy those positions back and
13 sell them. But at all times the facility was ready for
14 the region and has had a capacity factor well in excess
15 of 60 percent. So, it's basically an owner's choice.
16 A tolling agreement is certainly a prudent arrangement.
17 It provides certainty for both the fuel supplier and
18 the owner.

19 MR. IACOPINO: Thank you.

20 CHAIRMAN BURACK: Are there other
21 questions?

22 (No verbal response)

23 CHAIRMAN BURACK: Okay. Because Mr.
24 Pfundstein has made reference to this April 2, 2008

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[WITNESS: Madia]

1 letter, we may want to go ahead and mark this as an
2 exhibit now. I do not have the -- Exhibit 4?

3 MR. PATNAUDE: Yes.

4 CHAIRMAN BURACK: Okay. I do not have
5 the original of the letter with me, but we will provide it
6 for the official record. But we will mark this letter,
7 dated April 2, 2008. And, I guess I'll go ahead and just
8 read this into the record. It reads:

9 "Dear Chairman Burack, as the Selectmen
10 of the Town of Newington, we are writing in support of the
11 transfer of ownership of Newington Energy's 525 megawatt
12 generating station in our town from Consolidated Edison to
13 the North American Energy Alliance.

14 This plant, which is one of the newest
15 and cleanest electric generating stations in the
16 Northeast, has been operated since its initiation earlier
17 this decade under a contract agreement with a unit of
18 General Electric. It is our understanding that if the
19 change of ownership is approved, the contract with General
20 Electric will remain in place, assuring our town of the
21 continued safe, clean operation of the facility. While
22 the facility is highly efficient, and therefore does not
23 provide significant employment in Newington, it is an
24 important component to our tax base, and its continued

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[WITNESS: Madia]

1 strong performance under new ownership will assure our
2 community's long-term financial stability. We have also
3 been pleased with our relationship with the plant's
4 managers; have been in contact with representatives of the
5 NAEA and look forward to their continued participation in
6 the life of our community.

7 We appreciate your consideration. And,
8 if you have any questions about our support of this
9 transfer, please be assured we will respond promptly.
10 Sincerely, Cosmas Iocovozzi, Chairman."

11 So, again, we'll enter that into the
12 record as Exhibit 4.

13 (The document, as described, was
14 herewith marked as Petitioners' Exhibit
15 4 and was admitted into evidence.)

16 CHAIRMAN BURACK: Are there any further
17 questions at this time for Mr. Madia?

18 (No verbal response)

19 CHAIRMAN BURACK: If not, do you have
20 any further testimony at this time to offer?

21 MR. PFUNDSTEIN: No. No, I do not,
22 Mr. Chairman.

23 CHAIRMAN BURACK: Okay. Thank you very
24 much, Mr. Pfundstein. Mr. Needleman.

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[WITNESS PANEL: Wright|Thompson]

1 MR. NEEDLEMAN: Thank you, Mr. Chairman.

2 I'll begin with Ms. Wright.

3 (Whereupon Dunia Wright and Michael
4 Thompson were called as witnesses,
5 having been previously sworn.)

6 DUNIA WRIGHT, SWORN

7 MICHAEL THOMPSON, SWORN

8 DIRECT EXAMINATION

9 BY MR. NEEDLEMAN:

10 Q. Ms. Wright, could you state your full name and address
11 for the record please.

12 A. (Wright) Yes. It's Dunia Mary Wright. And, my
13 business address is 7 Times Square, New York.

14 Q. And, could you briefly describe your current
15 employment.

16 A. (Wright) Yes. I'm employed by Industry Funds
17 Management Proprietary Limited, which is an Australian
18 resident company, and I'm employed under the common
19 arrangement to the New York office of Industry Funds
20 Management.

21 Q. And, are you familiar with the financial capabilities
22 of the Co-Applicant here, NAEA?

23 A. (Wright) Yes, I am.

24 Q. Okay. I'm showing you a copy of a document that's been

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[WITNESS PANEL: Wright|Thompson]

1 marked as "Exhibit 2" in this proceeding. Are you
2 familiar with that document?

3 A. (Wright) Yes, I am. It's my testimony.

4 Q. And, at the time you executed that prefiled testimony,
5 was it true and accurate to the best of your knowledge?

6 A. (Wright) Yes, it was.

7 MR. NEEDLEMAN: I'd ask that this be
8 admitted into evidence please.

9 CHAIRMAN BURACK: Thank you.

10 (The document, as described, which was
11 premarked as Petitioners' Exhibit 2,
12 was admitted into evidence.)

13 BY MR. NEEDLEMAN:

14 Q. Ms. Wright, do you have any corrections you want to
15 make to Exhibit 2, the testimony that was just entered
16 into the record?

17 A. (Wright) Yes, only one correction. And, that's, if the
18 Committee members turn to Page 4 of my testimony, Line
19 6 of that page refers to an amount of equity that IFMN
20 has agreed to contribute to NAEAH to NAEA. At that
21 time, the equity contribution that we stated there was
22 "up to 597 million". IFMN has now made a decision to
23 actually contribute more equity into the transaction,
24 and that equity amount is now around 750 million.

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[WITNESS PANEL: Wright|Thompson]

1 Q. Thank you. Other than that correction, are there any
2 other corrections that you'd like to make?

3 A. (Wright) No.

4 Q. With that correction in mind, do you adopt and affirm
5 the testimony that you submitted today?

6 A. (Wright) Yes, I do.

7 MR. NEEDLEMAN: If it's acceptable to
8 the Committee, rather than have Ms. Wright answer
9 questions, I could move on to Mr. Thompson, go through him
10 briefly, and then the Committee could ask questions of
11 both of them simultaneously?

12 CHAIRMAN BURACK: That's fine. Please
13 proceed.

14 MR. NEEDLEMAN: Thank you.

15 BY MR. NEEDLEMAN:

16 Q. Mr. Thompson, could you please state your name and
17 business address for the record.

18 A. (Thompson) Michael James Thompson. My business address
19 is Level 29, 2 Lonsdale Street, Melbourne, Victoria
20 3000 Australia.

21 Q. And, could you please briefly describe your current
22 employment.

23 A. (Thompson) I'm an Executive Director of Infrastructure
24 at Industry Funds Management, the same employer as

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[WITNESS PANEL: Wright|Thompson]

1 Dunia Wright.

2 Q. I'm handing you a copy of a document that has been
3 marked as "Exhibit 3" in this proceeding. Do you
4 recognize that document?

5 A. (Thompson) Yes, I do.

6 Q. And, could you identify it please.

7 A. (Thompson) It's the testimony that I submitted in
8 February of this year.

9 Q. I think it might have been March.

10 A. (Thompson) March. I'm sorry, March of this year.

11 Q. And, at the time you submitted that testimony, did you
12 believe it to be true and accurate?

13 A. (Thompson) Yes, I did.

14 MR. NEEDLEMAN: I'd like to submit this
15 into evidence as well.

16 CHAIRMAN BURACK: Thank you.

17 (The document, as described, which was
18 premarked at Petitioners' Exhibit 3,
19 was admitted into evidence.)

20 BY MR. NEEDLEMAN:

21 Q. Mr. Thompson, are there any corrections that you would
22 like to make to your prefiled testimony?

23 A. (Thompson) There are no corrections.

24 Q. Okay. Thank you. And, would you please adopt and

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[WITNESS PANEL: Wright|Thompson]

1 affirm that testimony as true and accurate?

2 A. (Thompson) Yes, I do.

3 MR. NEEDLEMAN: Thank you. We have
4 nothing further at this point, and offer both of these
5 witnesses to the Committee for its questions.

6 CHAIRMAN BURACK: Are there questions
7 for either of these witnesses? Mr. Dupee.

8 MR. DUPEE: Thank you, Mr. Chairman.

9 BY MR. DUPEE:

10 Q. This question is probably for Ms. Wright. It has to do
11 with Page 4 of your testimony. You talk about the
12 funding of -- the overall funding for the project --
13 We're on actually Page 4 of your testimony, and there
14 you mention that the overall funding of the project
15 will be to IFMN an amount of roughly \$750 million, and
16 the balance being through "a debt facility underwritten
17 by Barclays Capital". Now, I note later on in the same
18 testimony it talks about Barclays and relatively
19 limited amount of experience with markets, "several
20 years" I think is how you phrase it in your testimony.

21 So, my question is, do you think that
22 institution has enough knowledge and skill to make sure
23 there's enough money on hand, enough assets on hand to
24 meet its obligation, as necessary?

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[WITNESS PANEL: Wright|Thompson]

1 A. (Wright) Yes, absolutely. I mean, I think that
2 Barclays Capital in this market is a bank, as I say in
3 my testimony, that has been active in terms of
4 financing these power generation assets and portfolios
5 over the past several years. You know, they have fully
6 underwritten the debt on this transaction, and,
7 obviously, it's a legally binding commitment. And, so,
8 we're more than confident that they will be able to
9 fund the debt on this transaction.

10 MR. DUPEE: One more?

11 CHAIRMAN BURACK: Please.

12 BY MR. DUPEE:

13 Q. I'm sure you're well aware, being situated in New York,
14 that we have quite a banking crisis in our own country,
15 a lot of it around securitization, that's not
16 particularly well defined, therefore, leads to a lot of
17 uncertainty in the markets who actually hold
18 liabilities. Now, and this, to my knowledge, has
19 ultimately spilled over to other countries. But, just
20 particularly in the case of Barclays in Australia, is
21 there any reason to believe those kinds of issues are
22 perhaps in play?

23 A. (Wright) Yes. No, none whatsoever. I mean, if the
24 question you're asking is really going to, to what

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[WITNESS PANEL: Wright|Thompson]

1 extent is IFMN, you know, at all exposed in respect to
2 subprime and the subprime problems? And, I can say
3 categorically that we have no subprime exposure
4 whatsoever. And, I can talk to the Committee, if the
5 Committee wishes, in respect to giving the Committee a
6 bit more information in terms of IFMN, its business,
7 and how it is that this particular infrastructure fund
8 that is acquiring this asset has, as I say, no exposure
9 to the current turmoil in the market. No direct
10 exposure anyway. I mean, obviously, we are, in terms
11 of the acquisition of this asset, there will be a debt
12 component. Obviously, you know, any -- all debt
13 markets are feeling like it's the -- the effects of
14 what's happening in the subprime market. But we have
15 no direct exposure, in terms of feeling direct
16 implications of what's happening in those markets.
17 And, that really is a function of the fact that we are,
18 you know, predominantly an equity investor. And, I can
19 talk, as I say, if the Committee wishes, to give you a
20 bit more information in terms of how IFM operates its
21 business and what its business is exactly in terms of
22 how we go about making these acquisitions globally.

23 MR. DUPEE: Thank you.

24 CHAIRMAN BURACK: If I may, Ms. Wright,

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[WITNESS PANEL: Wright|Thompson]

1 on behalf of the Committee, ask -- take you up on that
2 offer.

3 WITNESS WRIGHT: Okay.

4 CHAIRMAN BURACK: If you would provide
5 us with further background on how you do your investments
6 and how you go about --

7 WITNESS WRIGHT: Okay.

8 BY THE WITNESS:

9 A. (Wright) Well, maybe if I refer the Committee members
10 to my testimony and various elements of my testimony
11 and the Application itself, and also Exhibit A of our
12 Application, which gives quite a lot of background in
13 terms of IFM and how it conducts business around the
14 globe. But, perhaps if I turn the Committee members'
15 attention first to probably Page 1 of my testimony.
16 So, if you turn to I think Line 12 and onwards on Page
17 1, just to give you a bit of background on Industry
18 Funds Management.

19 Industry Funds Management, the entity
20 that employs myself and my colleague, Michael Thompson,
21 is effectively an investment management company, you
22 know, based in Australia, that specializes in a number
23 of private investment products. So, one of those
24 products is infrastructure, which is really the subject

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[WITNESS PANEL: Wright|Thompson]

1 of this acquisition that we're discussing today. Other
2 divisions of our company are private equity, private
3 debt, and we also have management of some listed equity
4 portfolios in Australia. So, effectively, we are, in a
5 sense, an in-house funds manager for a number of
6 pension funds. There are 40 pension funds in
7 Australia. Who, of these 40 pension funds, there are
8 four major pension funds who, in the early '90s,
9 decided that it would be in their interest to establish
10 their own funds manager to invest in this space, which
11 is effectively what we call "alternative assets". So,
12 it's the "alternative asset" asset class. So, in the
13 early '90s, what was happening in Australia is the
14 market -- the government was privatizing its
15 infrastructure assets. A number of these pension funds
16 who, and these pension funds are funds who today have
17 in excess of around 130 billion in terms of funds under
18 management. So, they're considerable pension funds.
19 And, as I say, those 40 pension funds are our ultimate
20 owners.

21 So, a number of these major pension
22 funds decided that it was a good idea to set up their
23 own fund manager to invest in this asset class. And,
24 the reason for that was, obviously, these pension funds

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[WITNESS PANEL: Wright|Thompson]

1 were relying on a number of the investment banks and
2 other financial institutions to provide advice to them
3 in terms of how to invest their pool of retirement
4 savings that they had. Well, I think they decided
5 "Well, you know, privatization is occurring in
6 Australia. It's certainly a market that's evolving.
7 It's probably in our interest to set up our own funds
8 manager." And, that's what IFM -- that's really IFM's
9 evolution and background. So, I think that's quite
10 significant in understanding precisely how we operate.

11 We are very unlike our competitors in
12 this market, in the infrastructure space. And, the
13 reason for that is really a function of our evolution
14 and our background. We are not associated -- you know,
15 we're fully independent. We're owned by pension funds.
16 We're not associated with any investment bank. While,
17 of course, we use, you know, various investment
18 advisory firms on the various acquisitions we do. So,
19 that's effectively some background in respect of IFM,
20 which is the funds manager.

21 Now, if we turn perhaps to Exhibit B to
22 the Application, and that is effectively the structure
23 diagram in terms of this particular transaction. So,
24 you'll see there, if the Committee members have that in

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[WITNESS PANEL: Wright|Thompson]

1 front of them, that at the top of that structure
2 diagram is an entity called "Industry Funds Management
3 (Nominees) Limited". Effectively, that is a related
4 company to the Funds Management Company. And, for all
5 intents and purposes, when you combine IFMN, that
6 entity at the top of that structure diagram, with the
7 entity to the left-hand side just beneath it, "IFM
8 International Infrastructure", and then "IFM Global",
9 that is effectively one of IFM's products, which is the
10 product dedicated to investing in these infrastructure
11 assets around the globe. So, effectively, that
12 particular vehicle is the vehicle that we use, our
13 Australian investors use, to acquire these
14 infrastructure assets and to house those infrastructure
15 assets. So, just going down that structure diagram,
16 you'll see that that particular fund will hold NAEAH
17 and then, in turn, NAEA, and then, obviously, the
18 underlying asset, which is the Newington Energy Plant.

19 So, effectively, if we turn now to
20 Exhibit A, which is the quite detailed information that
21 we provided the Committee in respect of IFM and its
22 portfolio of assets around the globe. And, I think if
23 I direct the Committee's attention in particular to,
24 yes, probably -- probably Page 4 of that handout.

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[WITNESS PANEL: Wright|Thompson]

1 You'll see there it's the slide entitled "IFM
2 International Infrastructure". That is effectively,
3 when you look again at that Exhibit B, the structure
4 diagram, that is effectively the vehicle that houses
5 all of our International Infrastructure assets. And,
6 "International" for us is anything outside of
7 Australia. So, effectively, all our U.S. and North --
8 So, North American and European infrastructure assets.
9 This particular acquisition, the subject of the hearing
10 today, is effectively an asset which will sit within
11 that pool of assets.

12 And, so, effectively, what, you know,
13 what my job in particular to do is, is to set up our
14 New York office and to manage our London office. So,
15 back in 2004, a decision was made by our domestic
16 Australian pension fund investors that, because the
17 market was of such maturity in Australia, that it would
18 be in their interest to now start seeking these
19 investments around the globe. And, so, in 2004, we
20 established this fund, the IFM International
21 Infrastructure Fund, which was a vehicle specifically,
22 as I say, to house acquisition of these infrastructure
23 assets around the globe. And, so, you'll see there
24 that that portfolio is considerable already. This is

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[WITNESS PANEL: Wright|Thompson]

1 effectively the acquisitions that IFM has made since
2 2004, when it first established that fund. And, you'll
3 see that the market value of those assets now
4 approximate 3 billion U.S. And, obviously, this
5 particular acquisition from Con Ed, you know, will take
6 that total assets under management up an extra, you
7 know, \$1.4 billion. So, we've got a considerable pool
8 of assets offshore, outside of Australia. And, I guess
9 our mission, and my job in particular, is to, in
10 respect of these offshore offices, these offices in
11 London and New York, to -- well, a couple of the
12 things. One is to have a platform from which to
13 continue to source high quality infrastructure deals
14 around the globe, and, secondly, to have an investment
15 base, an investment presence in these markets, so that
16 we continue to adequately manage the assets we have,
17 because, as you can see, we already have, you know,
18 close to -- it will be close to, you know, another 2
19 billion in assets just in the U.S. So, obviously, we
20 need to have staff on the ground who we actually place
21 on the boards of these portfolio assets, to manage
22 those assets and continue to derive value in the long
23 term. But also to have staff on the ground to continue
24 to source these deals in the United States and in

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[WITNESS PANEL: Wright|Thompson]

1 Europe.

2 And, just to give you, you know, a bit
3 more color in respect of, I guess, how we are different
4 in this market, we are a long-term equity investor in
5 the infrastructure space. And, what that means is, the
6 sorts of assets we look for are assets that have
7 long-term time horizons and that generate, you know,
8 stable cash flows. So, a number of the investors that
9 we -- And, what's happened actually over the last few
10 months is we have now launched a product in offshore,
11 so we've effectively launched a U.S. PPM. And, the aim
12 there is to really go out to the, you know, similar
13 minded investors in the U.S., so pension fund investors
14 predominantly, who, again, are looking to invest in
15 this evolving asset class in the states, which is
16 infrastructure. Our product is quite different from
17 the product of some of our competitors in this market,
18 and the reason for that is our style of products, or
19 this Global Fund, which you'll see on Exhibit B, the
20 structure diagram, it's an open-ended fund. So, unlike
21 a number of the infrastructure funds that have opened
22 up in the states over the last 18 months to two years,
23 we are not a private equity style fund. And, one of
24 these funds that are out on the market who, you know,

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[WITNESS PANEL: Wright|Thompson]

1 in IFM's view, are really exploiting the lack of
2 majority in marketing in the infrastructure space, are
3 setting up these funds that have a 14-year time
4 horizon. And, they're acquiring these assets and
5 tipping them into their fund, and effectively saying
6 that, you know, "the asset life of some of these assets
7 is 14 years."

8 Now, IFM has a completely different
9 business model and a completely different view of the
10 infrastructure space. We invest in economic
11 infrastructure. So, we invest in things like toll
12 roads, airports, energy plants, things that we believe
13 have long-term, contracted or regulated revenue
14 streams, and that we seek to hold on a long-term basis.
15 Our fund is an open-ended fund. In other words, it is
16 in perpetuity. It doesn't have a closed end. It's not
17 a 14-year fund, it goes on forever. Just as our funds
18 in Australia do. So, we have a similar fund in
19 Australia, which is just for Australia infrastructure,
20 obviously. That also is open-ended. And, what our
21 investors do in Australia is on an annual basis. But,
22 in the states and Europe, with this new fund that we
23 have just launched, it will effectively be on quarterly
24 basis. Investors can commit money, which, in turn,

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[WITNESS PANEL: Wright|Thompson]

1 goes into a pool of money, which we then invest in
2 these sorts of projects. So, you know, as I say, I
3 guess our business model and our ethos, based on our
4 ownership structure, based on the way we launch these
5 products in Australia, and what we're replicating here
6 in foreign markets, is that we seek assets with
7 long-term horizons and with, you know, sort of long,
8 stable contracted cash flows. And, I guess, from the
9 point of view of the Newington plant in particular, and
10 IFM as an owner, I think, you know, I would have
11 thought if you were a worker at the Newington Plant or
12 a member of the local community of New Hampshire, that
13 IFM is the sort of owner you'd like to have. Given the
14 fact that, as I say, you know, we're in -- we acquire
15 these assets for the long haul. We don't exit these
16 assets. We, you know, in terms of our business model
17 and our acquisition case for these assets, is we like
18 to hold these assets in the long term, so like 20, 30
19 year horizons.

20 So, hopefully, that will give the
21 Committee some background as to how IFM conducts its
22 business. And, I guess, in particular, how we intend
23 to manage this particular asset. And, my colleague,
24 Michael Thompson, can give you certainly a bit more

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[WITNESS PANEL: Wright|Thompson]

1 information in respect of the specific data as to how
2 this asset will be managed operationally going forward.

3 CHAIRMAN BURACK: Ms. Wright, before we
4 get to that, Mr. Getz, do you have a question?

5 VICE CHAIRMAN GETZ: Yes, I have a
6 number of questions that I would like to pursue.

7 WITNESS WRIGHT: Certainly.

8 BY VICE CHAIRMAN GETZ:

9 Q. Ms. Wright, you said that the -- you determined to
10 increase the equity from 597 to 750 million.

11 A. (Wright) Yes.

12 Q. I mean, that's still within the 1.447 billion purchase
13 price.

14 A. (Wright) Yes.

15 Q. And, do you -- So, that means that Barclays is
16 providing less debt?

17 A. (Wright) Yes. And, maybe Michael can answer that,
18 because he's more familiar with the data of the
19 transaction.

20 A. (Thompson) Yes. Under the, just to be clear, the
21 Barclays debt facility has not changed since the
22 information you originally received. Originally, the
23 original facility or commitment letter that Barclays
24 gave us had a range of debt between \$880 million and

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[WITNESS PANEL: Wright|Thompson]

- 1 \$750 million. And, that range, you know, basically, we
2 go through a whole heap of machinations of the cash
3 flows to come out at a level of debt in that range.
4 And, as at the current point in time, we've come out at
5 the \$750 million of debt. So, a difference between
6 1.477 and 750 is our equity commitment to the deal.
7 And, we have all the necessary approvals, Investment
8 Committee approvals, Board approvals and funding
9 capacity in place to pay that amount of money.
- 10 Q. Well, what I was trying to understand was what the --
11 the basis for the decision to put in more equity, was
12 it a function of the cost of debt is going up?
- 13 A. (Thompson) Yes. Because the debt markets have changed
14 since we first went into this deal, and has made the
15 cost of debt more expensive. Has made some of the
16 terms around that debt a little bit more onerous than
17 they originally were. Our initial -- Our investment
18 case was always predicated on the lower level of debt,
19 so at a higher level of equity. But we just, you know,
20 if we could get a higher level of debt, that's great
21 for our economics. But it's coming out basically where
22 our base case was.
- 23 Q. I guess it wasn't clear to me whether the rates with
24 Barclay had been locked in and --

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[WITNESS PANEL: Wright|Thompson]

- 1 A. (Thompson) Yes, they have.
- 2 Q. -- within a range?
- 3 A. (Thompson) They have, under the commitment letter,
4 there's a set of rates, and then they have some flex
5 rates, which enables them to increase the cost of debt,
6 depending on the market conditions. So, they have
7 flexed those rates. To actually sell this debt down in
8 the market, they need the higher rates. And, we -- our
9 investment case was based on those higher numbers
10 anyway. So, it's pretty much as we originally
11 expected.
- 12 Q. So, at this point then, the debt and equity ratio for
13 the entire deal --
- 14 A. (Wright) Yes.
- 15 A. (Thompson) Yes. So, it's --
- 16 Q. Well, we need to go one at a time for the --
- 17 A. (Thompson) Which is, I think, fairly conservative
18 compared to previous deals.
- 19 Q. And, so, for Newington, the Newington Energy LLC, then
20 there is a -- it's about half of the purchase price of
21 the entire transaction?
- 22 A. (Thompson) Correct. That's right.
- 23 Q. And, so, then is the debt to equity ratio for that the
24 equivalent 50/50 for the --

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[WITNESS PANEL: Wright|Thompson]

1 A. (Thompson) Yes. Under the facility, because the total
2 portfolio closes in two stages, we have the rest of the
3 Con Ed portfolio that we're buying closes first, and
4 then Newington closes second. And, that was just by
5 virtue of the lease arrangement at Newington which we
6 couldn't get out of until June. Barclays has -- the
7 facility that they provided is basically been tranchéd
8 in two ways. And, one tranche is applicable to the
9 portfolio, the other tranche is applicable to
10 Newington. And, yes, you're right, it's roughly 50/50.
11 So, the ratio is maintained for each, the portfolio and
12 Newington.

13 Q. And, is it fair to characterize the Newington Energy
14 LLC as a "nonrecourse project financed vehicle"?

15 A. (Thompson) Yes, it is. Basically, from an IFM
16 perspective, all the projects that we do we utilize
17 nonrecourse debt. There's no gearing at the IFM level
18 at all. We don't gear our equity. We do not gear our
19 equity at all. So, the only debt that we have in any
20 of our investments comes in at the project level on a
21 nonrecourse basis.

22 Q. So, then, you know, looking at the organizational chart
23 described by Ms. Wright, then there would be no
24 contractual or legal recourse up the ladder to IFM?

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[WITNESS PANEL: Wright|Thompson]

1 A. (Thompson) Correct. Correct.

2 Q. So, to the extent that there are assets backing this
3 project, in the event it did encounter financial
4 liability, it would be discretionary with IFM whether
5 it wanted to put more funds into the project?

6 A. (Thompson) Correct. That would be a shareholder
7 decision, yes.

8 VICE CHAIRMAN GETZ: That's all for the
9 moment.

10 CHAIRMAN BURACK: Great. Are there
11 other questions? Director Ignatius.

12 DIR. IGNATIUS: Thank you.

13 BY DIR. IGNATIUS:

14 Q. Continuing with the financial questions. Ms. Wright,
15 since the Application was originally filed, the
16 transaction changed, and the Allco entity is out of the
17 picture?

18 A. (Wright) Yes.

19 Q. Is there any relationship between Allco's financial
20 concerns and IFM's status and any reason that Allco
21 pulling out should give cause to us in looking at the
22 transaction?

23 A. (Wright) Yes. No, none whatsoever. And, I'll defer to
24 Michael to make a few comments, and then I'll add to

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[WITNESS PANEL: Wright|Thompson]

1 it.

2 Q. Okay.

3 A. (Thompson) Yes. The issues with Allco were unrelated
4 to us. I mean, Allco is a publicly listed company in
5 Australia. And, in addition, it had debt coming into
6 it. So, as opposed to IFM, where we're unlisted, and
7 we have no debt at the holding company level. Allco's
8 problems, we're not privy to all their problems, but
9 the press reports suggest that a combination of their
10 share price falling and triggered some covenants in
11 relation to their debt facilities, and that's what
12 caused them to be unable to continue to fund their
13 obligations under this transaction.

14 Once again, those are their own
15 problems, nothing related to us. And, so, going
16 forward, we have assumed all of their obligations under
17 the purchase and sale agreement with Con Ed. So, they
18 have no ongoing equity relationship whatsoever. They
19 have remained, All Capital has remained as an advisor
20 to us, a purely advisory capacity, simply because they
21 have some history in the deal.

22 A. (Wright) Well, I guess, if I could just add slightly to
23 that. Just very basically, from a basic sort of
24 analysis of how we're different. As Michael said, you

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[WITNESS PANEL: Wright|Thompson]

1 know, Allco is a publicly listed company in Australia,
2 which means it's subject to the retail market and share
3 pricing. IFM is a private company held by pension fund
4 investors. And, as I think I've said, these pension
5 fund investors, given that, in Australia, retirement
6 savings are actually compulsory, which means that every
7 employer needs to allocate 9 percent of every
8 employee's salary to compulsory retirement savings.
9 Obviously, what that means is these pension funds, who
10 are our owners, are growing at a rapid rate each year,
11 which, obviously, in turn, means that they have more
12 and more funds under management and therefore more and
13 more equity to deploy in these projects. So, you know,
14 we are quite different in that we are an equity
15 investor. Our commitments and our capital come from
16 these pension funds where they stay growing, and need
17 to continue to find money -- projects to place their
18 money.

19 Allco was, from our understanding of the
20 press reports, and as Michael said, you know, it was a
21 publicly listed company. Their world was quite
22 different. In respect of their investment in this
23 particular project when they're our partner, you know,
24 they didn't have institutional money to supply the

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[WITNESS PANEL: Wright|Thompson]

1 equity. And, our understanding was that what was
2 likely to happen is not -- in addition to, obviously,
3 the Barclays debt funding on these particular
4 acquisitions, their equity piece was effectively going
5 to be funded by their debt facility at their parent
6 company level.

7 Now, a quite different model to IFM,
8 where our equity comes, as I say, directly from our
9 investors, who have capital to deploy in these
10 projects. So, you know, markedly different. And, to
11 answer your question, you know, there are no
12 similarities in terms of what's happened to Allco being
13 replicated by IFM, because our model is so different,
14 and, also, because our equity sourcing for all of these
15 products is the pension fund investors in Australia.

16 CHAIRMAN BURACK: Director Ignatius.

17 BY DIR. IGNATIUS:

18 Q. And, so, is there any -- was there any reason that the
19 transaction, and particularly the Newington facility,
20 led Allco to be less interested in this deal or was it
21 that Allco's financial situation caused it to have to
22 remove itself from this?

23 A. (Thompson) It was Allco's financial situation purely.
24 That was the only reason they pulled out of the deal,

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[WITNESS PANEL: Wright|Thompson]

1 because they believed they would be unable to meet
2 their obligations, their equity obligations under the
3 deal, purely financial situation.

4 CHAIRMAN BURACK: Further questions?

5 DIR. IGNATIUS: Have some others that
6 aren't quite so related to the financing. So, if there
7 are others on that line, we should probably do those
8 first.

9 BY CHAIRMAN BURACK:

10 Q. Let me ask you, Ms. Wright, could you just give us a
11 little more understanding of who these pension funds
12 are? Are these private employers? Public employers?

13 A. (Wright) Yes. We actually, regrettably, we haven't
14 supplied the Committee with this particular slide,
15 which, you know, we're happy to, if possible, to be
16 placed into evidence. But, effectively, it's a slide
17 which shows precisely who our owners are. And, these
18 40 pension funds are -- well, they're a number of
19 pension funds who I guess are analogous to your Taft
20 Hartley funds here in the states, Taft Hartley pension
21 funds. So, effectively, in Australia, they're called
22 "superannuation funds", and they're funds that --

23 CHAIRMAN BURACK: You may need to spell
24 that word for us.

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[WITNESS PANEL: Wright|Thompson]

1 WITNESS WRIGHT: Okay. So,
2 superannuation, s-u-p-e-r-a-n-n-u-a-t-i-o-n.
3 "Superannuation" is just the term we use in Australia for
4 "pensions".

5 BY THE WITNESS:

6 A. (Wright) So, effectively, you know, retirement savings
7 funds is what they are. And, these funds, as I say,
8 because pension funds or pension savings in Australia
9 is compulsory, effectively every employee needs to
10 contribute 90 percent of its salary to these funds.

11 A. (Thompson) Nine percent. You said "90".

12 A. (Wright) Oh, 9 percent. I'm sorry, not "90", but 9.
13 Probably wishful thinking. So, 9 percent of their
14 salary. So, effectively, the employee then selects one
15 of these pension funds, and then their money is then
16 managed by these pension funds. So, these pension
17 funds are normally industry-based. So, probably, the
18 biggest of our owners are Australian Super, which is a
19 pension fund that effectively operates in the
20 manufacturing industry. Then, there is Cbus, which is
21 a construction pension fund, so mainly its members are
22 employees who operate in the construction industries.
23 There's another major investor called HEST -- HESTA,
24 which is effectively the pension fund for all of the

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[WITNESS PANEL: Wright|Thompson]

1 employees that operate in health services. So,
2 effectively, what these -- and, as I say, they're very
3 similar to the pension funds you have here. They're
4 basically made up of members who are individuals, who
5 effectively have a portion of their salary in
6 retirement savings. So, these pension funds then have
7 a pool of money, which they need to diversify across a
8 number of asset classes. And, as I say, in respect of
9 the alternative asset class, most of these pension
10 funds allocate between 3 and 11 percent to IFM. So,
11 you know, that gives you some idea of the sort of scale
12 of investing that they do.

13 A. (Thompson) The only other thing I might add is that
14 those 40 pension funds represent close to 5 million
15 individual workers. So, it's a large, compared to the
16 population, 20 odd million in Australia, it's
17 significant.

18 BY CHAIRMAN BURACK:

19 Q. So, of the -- what percentage of the overall pension
20 fund market do those 40 represent, in terms of just the
21 total numbers of funds and in terms of assets actually
22 invested? Do you have any sense of that?

23 A. (Thompson) In terms of the total market, no. But we're
24 talking about \$130 billion of assets under management

[WITNESS PANEL: Wright|Thompson]

1 for those 40 funds.

2 A. (Wright) Yes, I think, you know, I think the pension
3 fund market in Australia is significant. It's
4 probably, you know, close to a trillion. But, you
5 know, a non-insignificant portion of the market. The
6 other, I guess the competitors to our investors, the
7 pension funds, are the corporate -- what we call
8 "corporate superannuation funds". And, they're funds
9 that are made up not of -- that have different board
10 structures. They're associated often with companies.
11 So, I don't know, I think in the states you have
12 similar structures, where a particular company, such as
13 Con Edison, might have its own 401-K plan. I think
14 probably similar to that, in that, you know, some of
15 those larger corporations in Australia have their own
16 pension funds. And, I guess they are the competitors
17 to our investors, because our investors are
18 industry-focused, as opposed to company-focused.

19 CHAIRMAN BURACK: Thank you. That's
20 very helpful. Attorney Needleman, I think it would be
21 helpful if you could submit for the record a listing of
22 the various pension funds that are the investors in IFM.
23 That would be very helpful.

24 MR. NEEDLEMAN: We will do that.

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[WITNESS PANEL: Wright|Thompson]

1 BY CHAIRMAN BURACK:

2 Q. I also just want to clarify something with you, Ms.
3 Wright, that you mentioned earlier. As we understand
4 it, this particular acquisition of NEL will be through
5 IFM, and the holders of this will be the 40 pension
6 funds you've just described.

7 A. (Wright) Yes.

8 Q. And, your discussion of "seeking additional investors
9 from within the United States" is a reference to some
10 new portfolios? You're not suggesting that U.S.
11 investors would become part owners at some point of the
12 NEL facility through IFM, or not?

13 A. (Wright) Well, actually, I am.

14 Q. Okay.

15 A. (Wright) So, let me explain that a bit further. I'm
16 just trying to think whether we supplied you with a
17 slide that captures that. Yes. Perhaps if the
18 Committee turns to Exhibit B, which is that structure
19 diagram again, and I can just explain what we've done.
20 On the left-hand side of that structure diagram you'll
21 see an entity referred to as "IFM (International
22 Infrastructure) Wholesale Trust". That is the entity
23 which effectively houses those six assets which I
24 referred to before in Exhibit A.

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[WITNESS PANEL: Wright|Thompson]

1 Q. Would you hold just a moment to give all of us a chance
2 to find the document that you're referring to.

3 A. (Wright) Sure. Okay.

4 Q. Thank you.

5 A. (Wright) So, looking at Exhibit B, which is the
6 structure diagram, and then --

7 Q. We know that there was a replacement Exhibit B that was
8 filed, and some of us are searching for this now.

9 CHAIRMAN BURACK: Counsel, do you know
10 -- here we have it. It's dated March 11th, 2008.

11 BY CHAIRMAN BURACK:

12 Q. And, you're referring to --

13 A. (Wright) I'm referring to, yes, Exhibit B, which I
14 think most people have now the structure diagram. And,
15 then, I'm referring also to Exhibit A, which was part
16 of the original and obviously the amended Application.

17 (Brief off-the-record discussion
18 ensued.)

19 BY THE WITNESS:

20 A. So, then, Exhibit A, which is the sort of detailed
21 slide show on IFM. If the Committee turns to Page 4 of
22 that Exhibit A.

23 CHAIRMAN BURACK: Okay. Go ahead, I
24 think. Are we all there?

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[WITNESS PANEL: Wright|Thompson]

1 MR. IACOPINO: I think what may be
2 confusing is Exhibit A actually consists -- the Exhibit A
3 that everybody has actually consists of two sections. One
4 involves Allco. You can take that right out and disregard
5 it. And, then, the second section under the blue page
6 contains the IFM information.

7 CHAIRMAN BURACK: You may proceed now.
8 Thank you.

9 BY THE WITNESS:

10 A. So, if Committee members turn to that entity on the
11 left-hand side of the structure diagram, which is "IFM
12 (International Infrastructure) Wholesale Trust", and
13 then also look at Page 4 of Exhibit A, which lists
14 those six assets I referred to. Those six assets are
15 currently housed in that entity called "IFM
16 (International Infrastructure) Wholesale Trust". That
17 entity currently only has Australian pension fund
18 investors, our owners.

19 Now, one clarification I should make is
20 those 40 pension funds I referred to, who are our
21 ultimate owners, some of but not all of those pension
22 funds are investors in the underlying fund vehicle.
23 Because, basically, they're owners at the holding
24 company level. And, when it's down below from the

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[WITNESS PANEL: Wright|Thompson]

1 holding company level, we have a number of discrete
2 investment products or funds. This entity, this fund
3 here, "IFM (International Infrastructure) Wholesale
4 Trust", is just one of those many entities, and it is
5 the entity which has been designated to hold these
6 international or U.S. and European infrastructure
7 assets. So, those six assets referred to there,
8 "Colonial Pipeline", "Anglian Water", "Duquesne", "ZEC
9 Lodz", "Arqiva", and "MGN", and Michael can talk a bit
10 more about some of those underlying assets and the
11 similarities, in terms of the model of investing and
12 our other assets in the states already. But those six
13 assets, and then it will be seven once the Con Ed
14 acquisition occurs, they will be housed in that vehicle
15 called "IFM International Infrastructure Wholesale
16 Trust", which, as I say, currently only has Australian
17 investors.

18 What we're currently in the process of
19 doing is restructuring that investment vehicle so that
20 all of the assets in that vehicle, so the six assets,
21 plus the Con Ed asset, will ultimately reside in the
22 entity on the right-hand side of that structure diagram
23 called "IFM Global Infrastructure (Cayman) Fund". And,
24 effectively, that is going to be our global product,

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[WITNESS PANEL: Wright|Thompson]

1 which will have a number of investors. One category of
2 investors will be the existing Australian investors.
3 And, investing along side with those existing
4 Australian investors we hope will be U.S. investors and
5 then investors from Europe. And, again, you know, this
6 sort of talks a bit to how IFM conducts its business.
7 It was very important for us to have just one global
8 product to which all investors around the globe
9 participated.

10 What we see in this market is we see a
11 number of funds that have a number of conflicts, in
12 terms of how they conduct their business. They're
13 often associated with investment banks. They acquire
14 these assets, but they also offer financial advisory
15 services. There are all sorts of practices which don't
16 really create situations of transparency. So, it was
17 very important for IFM to establish a vehicle that
18 everyone could invest into, so that there were no, I
19 guess, suggestion that IFM going forward was going to
20 favor its, you know, existing Australian investors, who
21 are also our owners. So, I think that's pretty
22 significant. You know, we will be going and are going
23 to market at the moment with one pool of assets, the
24 six assets, which will be seven with the Con Ed

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[WITNESS PANEL: Wright|Thompson]

1 acquisition, and all investors, U.S., Australian, and
2 European, will invest along side and all have access to
3 this pool of assets.

4 So, to answer your question directly,
5 yes, hopefully, when we obtain some U.S. investors,
6 and, as I say, we've only just launched our product, we
7 issued our Private Placement Memorandum at the end of
8 January, you know, we hope that we will have U.S.
9 investors who will also have access to, you know, the
10 Newington asset.

11 BY CHAIRMAN BURACK:

12 Q. And, just to clarify, the investment opportunity will
13 be available solely to other pension funds or will it
14 be more broad than that?

15 A. (Wright) No, it will be effectively to, I mean, our
16 target market will be the pension funds, predominantly
17 the public offer funds, so entities like CalPERS and
18 CalSTRS, and then, you know, Taft Hartley funds, a
19 number of Taft Hartley funds, who, to be quite honest,
20 see a number of similarities with the way they conduct
21 their business with IFM. Because, you know, IFM's
22 ultimate owners are industry superannuation or pension
23 funds, who are not unlike these Taft Hartley funds.
24 So, I think, you know, they see a lot of similarities

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[WITNESS PANEL: Wright|Thompson]

1 in terms of placing their money with a firm that has, I
2 guess, similar similarities, a similar ethos, and
3 similar style of investing and I guess a similar
4 investment discipline.

5 CHAIRMAN BURACK: Thank you. That is
6 very helpful to understand. Director Ignatius.

7 DIR. IGNATIUS: Well, you're helped, and
8 I'm confused. So, we're still right at the same place we
9 were before.

10 BY DIR. IGNATIUS:

11 Q. In going through the Exhibit B, the chart, high finance
12 is not my strength. Can you tell me how you end up
13 with "Newington Energy" being in the box at the very
14 bottom and Newington Energy being in the box that's the
15 "IFM Wholesale Trust", in the top left?

16 A. (Wright) Yes, basically, if you look at that top left,
17 so, you mean "IFM (International Infrastructure)
18 Wholesale Trust"?

19 Q. Yes.

20 A. (Wright) That's just a fund. That's just a -- If you
21 just sort of view that as an investment vehicle, which
22 in turn holds all of these actual companies. So, that
23 chart I referred to, which has those other six assets,
24 all of those assets sit under IFM International

[WITNESS PANEL: Wright|Thompson]

1 Infrastructure Wholesale Trust. It's just sort of like
2 a pooling mechanism, which pools all of these
3 underlying assets. And, by underlying assets, I mean
4 underlying projects, like Newington. So, some of
5 those, you know, those other six assets, the Colonial
6 Pipeline, etcetera, they, in turn, would have all of
7 these different holding structures, but, ultimately,
8 they're all housed under the same vehicle, which is IFM
9 International Infrastructure Wholesale Trust. And, if
10 you think about NAEA, again, that's just sort of a
11 holding company, which is ultimately, you know,
12 ultimately comes under the same sort of parent, which
13 is that fund. Does that make a bit more sense?

14 DIR. IGNATIUS: I'll accept your
15 description and stick to the kind of business I do that
16 doesn't involve high finance.

17 CHAIRMAN BURACK: Are there other
18 questions for Ms. Wright? Mr. Bryce, did you have a
19 question?

20 DIR. BRYCE: No.

21 CHAIRMAN BURACK: You're all set. Okay.
22 Chairman Getz.

23 VICE CHAIRMAN GETZ: Yes, I'd like to
24 pursue some of the -- a little more on the financial line.

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[WITNESS PANEL: Wright|Thompson]

1 BY VICE CHAIRMAN GETZ:

2 Q. Isn't our real focus here, though, with respect to the
3 Newington Energy LLC, whether the cash flow or revenue
4 stream can support the debt and equity associated with
5 the \$736 million that's assigned to that?

6 A. (Wright) Yes.

7 A. (Thompson) Yes, if I could, I can answer that.

8 Q. Well, I got an answer "yes". Let me just ask a little
9 more about this, because what I'm interested in is, I
10 mean, what type of benchmarks are you using in terms of
11 interest coverage ratios, earnings before taxes,
12 interest, depreciation? What type of judgments were
13 you using in making this investment and how do they
14 compare what industry standards are, so we can feel
15 comfortable that this financing is -- works on its own?

16 A. (Thompson) There's probably two aspects to that.
17 There's the equity side of the equation and the debt
18 side of the equation. From an equity side of the
19 equation, I mean, the way that we value these assets is
20 we predict cash flows going out over many, many years,
21 25, 30 years. So, we sit there, we have a large number
22 of consultants and advisors who all help us, doing
23 forecasts of capital expenditure, operating
24 expenditure, revenues, revenues by reference to

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[WITNESS PANEL: Wright|Thompson]

1 agreements that we may put in place or we're proposing
2 to put in place. So, basically, we have a financial --
3 what we call a "financial model", which basically, in
4 detail, sets out all the operating cash flows arising
5 from the asset that we believe is going to happen.
6 That is subject to an intense amount of scrutiny and
7 sign-off by independent experts, engineering people,
8 environmental people, and financial advisors
9 themselves. And, the banks, Barclays themselves also
10 gives a lot of scrutiny to these. From an equity
11 perspective, we'll then come up with these cash flows
12 and we'll do basically a discounted cash flow analysis
13 and to come up with -- to target the return, the equity
14 return that we would like to achieve. Those equity
15 returns are basically the returns that our investors
16 expect to get. You know, we have a lot of discussions
17 with investors as to what sort of returns they expect.
18 So, by virtue of -- we work backwards, what is the
19 amount of equity that we could inject into this project
20 to get that required return? We then -- And, so,
21 that's subject to a lot of internal scrutiny,
22 obviously, from the investment committees and
23 investment boards and so forth and so on that analysis.
24 And, so, it's really driven by cash flows, cash flows

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[WITNESS PANEL: Wright|Thompson]

1 that are coming out of the business.

2 From a debt perspective, what we are
3 doing with these projects is we are targeting an
4 investment grade rating, we're trying to -- by
5 reference to Standard & Poor's and Moody's, they will
6 rate these assets. And, so, there are certain
7 parameters that they look at in terms of debt service
8 coverage and debt to EBITDA, Earnings Before Interest
9 and Taxes, Depreciation, Amortization. So, they'll
10 look at all those ratios, and, in fact, we were with
11 the ratings agencies on Wednesday, where they were
12 given detailed presentations, and they're doing their
13 analysis as we speak. And, that will come back to us
14 over time with their views on the credit rating, if you
15 like, as to the assets that we're acquiring.

16 Q. And, do you have any expectation in that regard of what
17 the --

18 A. (Thompson) Well, we're targeting investment grade, so
19 that's BBB, probably BBB-, BB, is sort of the area that
20 we're looking at. We're fairly comfortable it's going
21 to be at least BB. And, BB is what we targeted
22 originally in our investment case. So, if we can get
23 something higher than that, that's great, it brings
24 down the cost of debt for us. But, I mean, that's

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[WITNESS PANEL: Wright|Thompson]

1 probably how we look at the investment.

2 CHAIRMAN BURACK: Thank you, Chairman
3 Getz.

4 BY CHAIRMAN BURACK:

5 Q. I just want to ask you a few questions here about the
6 credit facility from -- the letter of credit from
7 Barclays. There's perhaps as much, if not more, that's
8 been redacted from what's been provided. So, we don't
9 -- we, obviously, don't know the terms. Can you share
10 with us in any sense generally what kinds of rates
11 you're subject to here?

12 A. (Thompson) I think where we're at, the margins, it
13 really comes down to the margins. And, I think -- I
14 think we're at around about, it depends on the flex,
15 where they're coming out on the flex, but it's probably
16 around about 350, 400 basis points as the margin. And,
17 that's going to change, depending on the credit rating
18 we get and depending on the appetite in the syndication
19 market on the debt.

20 Q. And, those rates are -- there are two different
21 components, as I understand it, to this facility. One
22 is for the actual acquisition piece and the second is a
23 -- what I understand to be revolving letters of credit
24 relating to ongoing operations of the facility?

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[WITNESS PANEL: Wright|Thompson]

1 A. (Thompson) That's correct. The \$750 million that I
2 referred to earlier is the acquisition, the actual
3 acquisition debt. That's a seven year tenor of debt.
4 Yes. And, in addition to that, we have an LC facility
5 for \$120 million and we have a revolver facility for
6 \$30 million. So, the LCs, there's a number of LCs that
7 we have to put in place for credit support for
8 suppliers and counterparties and hedge transactions and
9 so forth, so that utilizes a lot of the letter of
10 credit facility. For the revolver, there's a liquidity
11 tool to, you know, we can draw down and pay back at
12 will, basically.

13 Q. And, that 120 million and 30 million, is that for all
14 of the facilities within the --

15 A. (Thompson) Yes, that's basically across the whole
16 portfolio of assets that we're acquiring, as is the
17 750. That's applicable to the whole portfolio of
18 assets, including Newington, that we're acquiring.

19 Q. So, there's no specific percentage of those, of those
20 monies that are allocated to Newington specifically?

21 A. (Thompson) No, it's available for use across the pool
22 of assets at our discretion.

23 CHAIRMAN BURACK: Thank you. Are there
24 other questions on financial matters at this time? Okay.

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[WITNESS PANEL: Wright|Thompson]

1 Attorney Iacopino.

2 BY MR. IACOPINO:

3 Q. Ms. Wright, am I correct in understanding that the
4 parent company of IFM is Industry Super Holdings Pty
5 Limited?

6 A. (Wright) That's right.

7 Q. And, I guess a sister company to IFM is Industry Funds
8 Services?

9 A. (Wright) That's right.

10 Q. Okay. And, another sister company -- I don't know if
11 this is a sister company or is actually --

12 A. (Wright) Well, IFM, actually Industry Funds Services,
13 is sort of the ultimate parent of Industry Funds
14 Management, the funds management arm. It's a bit
15 complicated in the structure, but, in turn, Industry
16 Funds Services is owned by the entity you referred to,
17 the Industry Super Holdings, which whose other main
18 asset is Members Equity Bank. And, Members Equity
19 Bank, just for the benefit of the Committee members, is
20 effectively, again, a bank which is owned by the 40
21 superannuation or pension fund owners. So, in a sense,
22 these pension funds have set up their own bank, which
23 is, I guess, not unlike I think there's an entity
24 called "Amalgamated Bank" in the states, which, again,

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[WITNESS PANEL: Wright|Thompson]

1 is owned by pension funds. So, it's very similar to
2 that. Members Equity Bank is owned by these pension
3 funds. And, in a sense, IFM is that bank's fund
4 management arm.

5 Q. And, could I feel secure looking at the website for
6 Industry Funds Services to find the 40 pension funds
7 which you spoke about?

8 A. (Wright) Yes, you could.

9 CHAIRMAN BURACK: Okay. What I think
10 we'll do now, not to preclude anybody if they have further
11 questions later about financial matters, is to move onto
12 discussions of managerial or technical matters here. So,
13 I don't know if members of the Committee have particular
14 questions they would like to ask about managerial or
15 technical matters? Director Ignatius.

16 DIR. IGNATIUS: Thank you.

17 BY DIR. IGNATIUS:

18 Q. A couple of questions that may go more to Mr. Thompson,
19 but, please, whoever best can answer them. One is just
20 very basic. What is it about the New England facility
21 that you are interested in?

22 A. (Thompson) I think, well, firstly, it's part of the
23 portfolio of assets that were being offered by Con Ed,
24 so it was part of the sale. That aside, the Newington

[WITNESS PANEL: Wright|Thompson]

1 facility is the most significant facility of all the
2 assets we're acquiring from Con Ed. It comprises about
3 30 percent of the total capacity. It's a new plant,
4 very well run, environmentally friendly. And, it
5 enabled us to put in place a tolling agreement, which
6 we referred to earlier, with Shell. So -- And, I guess
7 it's a gas-fired plant, and so we have, as an
8 organization, have a leaning towards more
9 environmentally friendly assets. There may be some
10 others. And, so, that just fits in with our overall
11 strategy.

12 Q. All right. And, in the material submitted between the
13 revised Application and your testimony, it's a little
14 confusing on where the asset management services
15 negotiations stand. In the revised petition or
16 Application, I think on Page 15, it says "NAEA is in
17 discussions with CPV regarding provision of asset
18 management services", and details would be provided to
19 us. And, then, I think in your testimony it's stated
20 straight out that, onto Page 5, that you will be
21 supporting -- that NAEA will be "supported by asset
22 management specialists such as CPV". So, what is the
23 status of those negotiations?

24 A. (Thompson) The way -- At the time of submitting the

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[WITNESS PANEL: Wright|Thompson]

1 testimony, NAEA was basically an entity, the concept,
2 really, we were in the process of building it up and
3 creating that organization. Since that testimony has
4 been put in, Mr. John McTear has come on board as the
5 CEO of NAEA, and he can talk a lot more about the
6 structure of NAEA going forward. But, at the time, we
7 did not have a CEO, we did not have any employees at
8 NAEA. So, we needed to have a backup plan, if you
9 like, to have someone come in and provide asset
10 management services, should we not have been able to
11 put people on the ground at the time of -- at the time
12 of closing of the acquisition.

13 So, where we actually -- we've entered
14 into an agreement with Competitive Power Ventures, CPV.
15 They're an experienced asset manager. And, Tom can
16 talk to the credentials of CPV. But, basically, they
17 offer a whole suite of asset management services and
18 transition services. So, they came on board to assist
19 us in, if you like, extracting the business out of Con
20 Ed into a stand-alone entity, being NAEA.

21 Going forward, NAEA will -- is the
22 actual asset manager. CPV will be providing services
23 up to closing, and then through closing, at John's --
24 at however John wants to use them. And, that's very

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[WITNESS PANEL: Wright|Thompson]

1 specific services in relation to the accounting, and
2 could be related to energy trading, could be related to
3 any manner of things. Maybe, John -- John might like
4 to speak about that.

5 JOHN McTEAR, PREVIOUSLY SWORN

6 BY THE WITNESS:

7 A. (McTear) Yes. My name is John McTear. I'm CEO of
8 NAEA. The intention is for NAEA eventually to be a
9 freestanding organization, fully staffed internally.
10 In the transition, the plans are to offer employment
11 transfers of the current asset managers from the Con Ed
12 Development organization, the technical support
13 personnel from that organization. And, hopefully,
14 they'll join at closing and come over to work for NAEA.

15 The backstop plan for that is to use CPV
16 for their expertise and experience in asset management
17 and operations and maintenance management. To use them
18 as additional management support, and to provide
19 resources, as necessary, while NAEA goes through its
20 growing pains. Additionally, there's an agreement
21 being negotiated with Con Edison development entities
22 for transitional services, in terms of HR support,
23 accounting support, IT support, and some regulatory
24 support, regulatory support, so that we have a seamless

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[WITNESS PANEL: Wright|Thompson]

1 transition and don't lose any important operations in
2 the process.

3 So, going forward, we're going to rely
4 on the potential transfer of people from the CED
5 organization, particularly those who directly are
6 involved with asset management of Newington at this
7 time. CPV will be a very valuable asset for management
8 support and for natural resource support, where we have
9 gaps in the organization. And, in the interim, we'll
10 rely very heavily on the transition services from the
11 Con Edison entities to help us with backroom
12 operations, particularly HR and with the accounting
13 functions.

14 We're in the process of using a third
15 party advisor on HR, who works directly for us, to be
16 sure that the HR issues are handled correctly. The
17 people issues are very important to us. The other
18 assets are operated by employees of CED and its
19 subsidiaries, we need to be sure those people are
20 handled correctly. One advantage we have with the
21 Newington asset is GE is the operator of the plant,
22 with 24 full-time employees. We intend to continue
23 that relationship.

24 From my previous experience with CED,
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[WITNESS PANEL: Wright|Thompson]

1 I'm familiar with how effectively they have managed the
2 facility, and how safely and how environmentally
3 compliant. GE's view of citizenship in the communities
4 where they work is consistent with IFM and what NAEA
5 intends to do. So, we expect to see no change locally
6 at NEL in how the hands-on day-to-day operations are
7 performed.

8 Environmental compliance is part of the
9 responsibility under the O&M agreement. Of course, the
10 owner's ultimately accountable for that performance.
11 Con Edison has a resident specialist in environmental
12 safety stationed in West -- in Springfield,
13 Massachusetts. We will offer him employment, and if
14 he's agreeable, we will have that continuity in terms
15 of environmental compliance and health and safety.

16 So, again, we have a lot of moving parts
17 right now as we go through this transition. But we
18 think we have the resources and the expertise available
19 to do it very effectively and without compromising
20 safety or environmental compliance.

21 CHAIRMAN BURACK: Director Ignatius.

22 BY DIR. IGNATIUS:

23 Q. Just a couple follow-ups to that. During the
24 transition period, getting ready towards closing,

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[WITNESS PANEL: Wright|Thompson]

1 people are in kind of a no man's land, and can be a
2 difficult time for employees, not sure what's going on.
3 How active can NAEA, if I got the letters right, be
4 during that period, before the closing has actually
5 occurred?

6 A. (McTear) Yes, I'll note off the record, I wish that the
7 letters were easier to say.

8 A. (Thompson) I'll note it on the record.

9 A. (McTear) NAEA has met with the employees at our other
10 assets, the operation and maintenance employees. It's
11 a little more difficult dealing at this point in time,
12 sitting down with the employees at CED level, with the
13 asset management, because they have so many things
14 going on at their end towards closing. We have offered
15 a comprehensive benefit plan, because the first thing
16 people worry about are their benefits. All of the CED
17 employees involved with asset management have been
18 shown what that benefit plan will look like. It's
19 meant to be at least as good for the individuals as
20 what they currently have.

21 We've had some preliminary, very brief
22 discussions with some of the key people. Next week, my
23 goal is to meet face-to-face with all the CED people
24 and understanding what their wants and needs are. Most

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[WITNESS PANEL: Wright|Thompson]

1 have expressed an interest in transferring over. And,
2 what my intentions next week is to sit down with each
3 of those individuals and talk about what their roles
4 would be, compensation, continuity of employment. How
5 they transfer and when is a question of closing. This
6 acquisition will close in two stages. One will be the
7 other assets, one will be NEL. That may put some
8 people in a dual role for a short period of time, that
9 needs to be worked out from a reliability standpoint.
10 But our intention is, for those people who want to come
11 over, is to make it as easy and seamless for them as
12 possible, basically, just seeing a different color on
13 their paycheck. Have the same medical benefits, which
14 is always a hygiene factor for employees and their
15 families, the same medical benefits, the same health
16 care providers, with none of this running around where
17 I've got to get a different coverage. They have United
18 Health Care now, they'll have United Health Care going
19 forward. Some of the represented employees at some of
20 our other assets use Tufts. Tufts will be available to
21 them. Again, we're trying to make this as easy as
22 possible for people to make this transfer.

23 A. (Thompson) If I can just clarify one thing that John
24 said. We are taking over all the plant level employees

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[WITNESS PANEL: Wright|Thompson]

1 at all the other plants. The CED people that John
2 refers to is an organization that sits outside of the
3 assets that we're acquiring. So, there's about 10 or
4 11 people there. They're the ones that we're talking
5 -- the asset managers that we're talking to come
6 across. The remaining plant level people are all
7 coming across automatically. That's part of the sale.

8 Q. Thank you. And, when you said there's a two-stage
9 closing, with the Newington facility being in the
10 second stage, --

11 A. (McTear) That's correct.

12 Q. -- what's the date now for closing?

13 A. (Thompson) Under the sale and purchase agreement, it's
14 basically we have to close five days after all
15 regulatory approvals and consents have been received.
16 There is -- Newington is subject to a synthetic lease.
17 The termination of that lease is due to take effect on
18 the 20th of June. Five business days post makes that
19 27th of June, so that's our targeted closing on
20 Newington.

21 DIR. IGNATIUS: Thank you.

22 CHAIRMAN BURACK: Okay. Go ahead,

23 Chairman Ignatius -- I'm sorry, Chairman Getz.

24 BY VICE CHAIRMAN GETZ:

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[WITNESS PANEL: Wright|Thompson]

1 Q. I have one follow-up on Director Ignatius's question
2 about the attractiveness of the Newington project.
3 And, I think, Mr. Thompson, you spoke to the tolling
4 agreement with Shell. And, do I understand it
5 correctly that the attractiveness of that is that it
6 limits your financial risk, because someone else is
7 taking some of the exposure to volatile energy prices?

8 A. (Thompson) That's right. John can talk to the
9 technical aspects of it. But, from a financial
10 perspective of the tolling, we look for long-term,
11 stable cash flow investments. So, for us to take over
12 this plant and have it exposed to spot market, it just
13 doesn't work for us. That's not our -- it's our
14 investment strategy, it's not our risk profile. So, we
15 would always look to put in place some form of
16 agreement that would give some stability and
17 predictability to the cash flows going forward. Hence,
18 we've entered into the tolling agreements. But not
19 only does it give us a very strong indication of what
20 our cash flows perceived going forward are, it takes
21 out a lot of the risk associated with the fuel and so
22 forth, because fuel becomes, managed by Shell, becomes
23 a pass-through. So, it really de-risks the plant.
24 Now, maybe it takes away some of the upside, but we're

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[WITNESS PANEL: Wright|Thompson]

1 happy to do that, because it fits with our risk
2 profile.

3 VICE CHAIRMAN GETZ: Thank you.

4 BY CHAIRMAN BURACK:

5 Q. If I may follow up on that, and I'm sorry if I missed
6 this earlier. Is such a tolling agreement with Shell
7 in place now for this facility?

8 A. (Thompson) No. The tolling agreement will be the
9 agreement that commences when we take over Newington.
10 But we've agreed with Shell, it's been executed, the
11 agreement has been executed to commence from us taking
12 over. The effective date is closing of the
13 acquisition.

14 Q. Okay. So, then, effective as of the closing date, am I
15 correct that there are no tolling agreements in place
16 now for this facility?

17 A. (Thompson) Correct.

18 Q. Okay. But, as of the closing date, there will be a
19 tolling agreement in place. And, can you give us some
20 sense, and perhaps the gentlemen from Shell need to
21 speak to this as well, is what are the basic terms and
22 conditions of the tolling agreement? In essence, how
23 does it work? We heard earlier that this plant is
24 currently operating at 60 percent capacity. Are you

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[WITNESS PANEL: Wright|Thompson]

1 anticipating it's going to operate at 60 percent or are
2 you anticipating some higher or lower level of activity
3 at the plant?

4 A. (McTear) Yes, I think Shell should answer that
5 question. Because, under the toll, they will have the
6 ability, within technical and environmental emissions
7 limits, to operate the plant as economically as they
8 choose to. So, I prefer that Shell answer that
9 question, in terms of anticipated capacity factors.

10 CHAIRMAN BURACK: Thank you. And, if
11 the gentlemen from Shell would introduce themselves before
12 speaking, that would be helpful.

13 MATTHEW PICARDI, PREVIOUSLY SWORN

14 BY THE WITNESS:

15 A. (Picardi) Yes. My name is Matt Picardi. I'm Vice
16 President of Regulatory Affairs for Shell Energy North
17 America. Some of you may know us more as Coral Power.
18 We're one of the largest natural gas and power
19 marketing firms in North America. Our company is in
20 the process of merging Coral Power into Shell Energy
21 North America, which is an A rated company. We enter
22 into transactions such as this all over America in
23 various forms. In this particular transaction, we have
24 here John Hartnett, who can speak to, at a high level,

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[WITNESS PANEL: Wright|Thompson]

1 certainly what our incentives are and how we would seek
2 to offer the output of the project into the markets.
3 And, he could certainly speak to also the structure, in
4 terms of how we value what we do.

5 Certainly, you're correct, we're
6 incented to offer this, to bid it in and have this unit
7 operate as efficiently as often as possible, and we'll
8 do that. We certainly have some confidentiality
9 concerns about talking about specific things that we
10 would do. We do not know the strategies that were used
11 by Con Ed, we're prohibited from doing that. But we
12 can only guess and surmise, since we have the same
13 incentives, they would be very similar.

14 So, John, why don't you take over and
15 introduce yourself.

16 JOHN HARTNETT, PREVIOUSLY SWORN

17 BY THE WITNESS:

18 A. (Hartnett) My name is John Hartnett and I'm with Shell
19 Energy. And, I guess, very generally, the way that we
20 would expect to utilize the plant is economic dispatch
21 of the plant into the New England energy system. If
22 the plant has been historically operating at 60,
23 65 percent capacity factor, given the current market
24 conditions in New England and projected market

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[WITNESS PANEL: Wright|Thompson]

1 conditions in New England, we expect that the plant
2 will operate at least at those levels, potentially at
3 higher levels, as demand growth continues. This being
4 a very efficient -- a very efficient power plant, it
5 should -- its utilization should continue to
6 strengthen.

7 CHAIRMAN BURACK: Thank you. Are there
8 other questions for these gentlemen from Shell?

9 (No verbal response)

10 CHAIRMAN BURACK: Okay. I think what
11 we're going to do is we're going to take a brief recess
12 here, give our stenographer an opportunity to get a little
13 break here. And, I think I might also entertain a motion
14 that, during this recess, the Committee might confer with
15 legal counsel in a nonpublic manner to -- what's that?

16 MR. IACOPINO: A nonmeeting.

17 CHAIRMAN BURACK: In a nonmeeting, I'm
18 sorry, to review just procedural matters here.

19 DIR. BRYCE: Mr. Chairman, I would make
20 that motion.

21 CHAIRMAN BURACK: Is there a second to
22 that motion?

23 DIR. SCOTT: Second.

24 CHAIRMAN BURACK: Second by Mr. Scott.

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[WITNESS PANEL: Wright|Thompson]

1 All in favor?

2 (Multiple members indicating "aye".)

3 CHAIRMAN BURACK: Opposed?

4 (No verbal response)

5 CHAIRMAN BURACK: Abstentions?

6 (No verbal response)

7 CHAIRMAN BURACK: None. Okay. Thank

8 you. We will go ahead and hold a recess for probably

9 about ten minutes or so, try to regather here at

10 approximately 10:45. Thank you.

11 (Whereupon a recess was taken at 10:36

12 a.m. and the hearing reconvened at 10:54

13 a.m.)

14 CHAIRMAN BURACK: Okay. We will

15 proceed, continue with Agenda 1, Agenda Item Number 1

16 today. Just want to see if there are any additional

17 questions that any members of the Committee have for any

18 of our witnesses. So, who would like to -- anybody wish

19 to start?

20 VICE CHAIRMAN GETZ: I have just one.

21 CHAIRMAN BURACK: You have a few

22 questions, okay.

23 BY VICE CHAIRMAN GETZ:

24 Q. I don't know if it's for counsel or who this will be

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[WITNESS PANEL: Wright|Thompson]

1 for. But can you give us an update on the status of
2 any of the approvals needed in Massachusetts, New
3 Jersey or Maryland that might have some effect on this?

4 A. (Thompson) Yes, I can tell you that we have received
5 all that regulatory approvals that are required. EFSEC
6 is the only outstanding regulatory approval required to
7 satisfy the conditions precedent in relation to the
8 sales and purchase agreement.

9 CHAIRMAN BURACK: Okay. Thank you.

10 BY CHAIRMAN BURACK:

11 Q. Could you also give us a sense in terms of when you
12 think the bond rating will be decided?

13 A. (Thompson) It should take -- It could take three to
14 four weeks. It could even happen post closing of the
15 first portfolio of assets. So, we -- the debt may be
16 provided prior to the rating. Getting the rating is
17 not a condition precedent to the banks funding it. It
18 just goes to pricing.

19 Q. Okay. Thank you. On the subject of debt, I just want
20 to follow up a little more on the discussion we had
21 earlier. Can you help us understand how basically the
22 operating capital amount was set for this project, the
23 120 million and the 30 million, and on what basis you
24 have comfort that that's -- that those are adequate

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[WITNESS PANEL: Wright|Thompson]

1 amounts for the operations?

2 A. (Thompson) Certainly, the LC facility was based on us
3 reviewing the credit support that Con Ed currently has
4 in place, because we have to step into Con Ed's shoes.
5 And, also, you know, account for the fact that we're
6 entering into some various hedging arrangements and so
7 forth, which may require LCs. We didn't know how much
8 at the time, so we just sort of basically worked up and
9 probably created a little bit of buffer there in the
10 120 for the LCs. The revolver is, I mean, typically,
11 they'll only give you a relatively small revolver
12 amount anyway, you know, it could be 30, 40, 50. But
13 we're comfortable that that amount was -- that we could
14 live with that amount. We think we've got enough. We
15 think that our forecasts, our operating forecasts are
16 conservative enough that we're unlikely to have to use
17 it anyway. I mean, in all our financial projections we
18 have not factored in using the revolver at all. So, --

19 Q. Thank you. And, in terms of the LC, I gather that this
20 is really a necessity for the project, you wouldn't be
21 able to do this project without having some letter of
22 credit, is that correct?

23 A. (Thompson) That's correct. There's a number of vendors
24 and suppliers, not just to Newington, but to the other

[WITNESS PANEL: Wright|Thompson]

1 assets that we're acquiring who require some credit
2 support. And, you know, Con Ed may already have
3 letters of credit with these people. And, so, at
4 financial close, we actually have to replace the credit
5 support that Con Ed has. For example, the supply of
6 oil to Newington with Sprague, there's a letter of
7 credit there, \$2 million or thereabouts. And, we would
8 have to then replace what Con Ed currently has in place
9 with something from the Barclays facility.

10 Q. If that letter of credit were to prove to be
11 inadequate, is there any kind of backup letter of
12 credit or do you feel you have the ability to seek
13 additional funds from Barclays? How would you deal
14 with that?

15 A. (Thompson) Well, the sizing of that letter of credit
16 facility includes a buffer, more than a buffer -- quite
17 a sizable buffer over and above the amount of the LCs
18 that we're going to have in place or need in place, so
19 we're going to have a lot of capacity under that LC
20 facility. And, it could well be that we could
21 transverse any excess of the LC facility across to the
22 revolver, if it became necessary as well. So, Barclays
23 has looked upon it as one bundled facility.

24 CHAIRMAN BURACK: Thank you. Other

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[WITNESS PANEL: Wright|Thompson]

1 questions? Attorney Iacopino.

2 MR. IACOPINO: Thank you.

3 BY MR. IACOPINO:

4 Q. I'm just a little bit confused. On Page 13 of the
5 revised Application, Mr. Thompson, and then on Page 6
6 of your prefiled testimony, you indicate that, as part
7 of the overall transaction, you're acquiring Con Ed
8 Development Operating Company and CEEMI. And, then,
9 when I heard the testimony earlier, it sounded as
10 though you were trying to lure employees from, I guess,
11 OpCo or the Operating Company.

12 A. (Thompson) Yes.

13 Q. Am I correct in understanding that both of those
14 companies are going to be acquired as part of the
15 transaction?

16 A. (Thompson) That's correct. I think I was trying to
17 explain earlier that we're taking those employees at
18 the plant level operating staff, so all of those are
19 expected --

20 A. (McTear) Yes. CED Operating Company has employees in
21 New Jersey and in Maryland, operating the Lakewood,
22 Ocean Peaking Power, and Rock Springs facilities.
23 CEEMI is headquartered in West Springfield,
24 Massachusetts and has 34 employees, 24 of whom are

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[WITNESS PANEL: Wright|Thompson]

1 represented. Those entities are being bought, the
2 employees are part of the acquisition. I know that
3 doesn't sound right.

4 Q. No, it does, actually, but go ahead.

5 A. (McTear) Yes, when we buy those companies, what comes
6 with them are the employees. And, so, it's a question
7 of handling human resource and the bargaining agreement
8 issues at CEEMI. At the CED level, we're not acquiring
9 CED, we're acquiring its assets. There are a number of
10 people who are CED employees, in lower Manhattan, who
11 have the option to join NAEA. They may have options to
12 go to work for other Con Ed entities or to go out on
13 their own. Those are the people that we have to
14 concentrate on in the next week or so, because they're
15 key players in the asset management field. And, to the
16 point those people choose to go elsewhere, that's where
17 we'll be relying on CPV and others to provide us some
18 of those hands-on asset management services.

19 Q. That was the company, the same company you came from?

20 A. (McTear) That's correct, yes, sir.

21 Q. Okay. Is the plans for the operating company and for
22 CEEMI, is it to maintain their staffing levels at the
23 -- I think you represented 35 employees and 33
24 employees?

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[WITNESS PANEL: Wright|Thompson]

- 1 A. (McTear) Yes. These plants are manned at the optimum
2 level. We have no intention of reducing head count in
3 any of the plants. Where we have people leave by
4 attrition, we will replace them, because, again, I
5 think we're at the optimum employee level at each of
6 those facilities.
- 7 Q. My other operating question is, has there been any
8 reticence at all on the part of General Electric in
9 continuing its Operations and Maintenance Agreement
10 with the transferees?
- 11 A. (McTear) No. As a matter of fact, General Electric has
12 been anxious over the last several years to lengthen
13 the tenor of their O&M Agreement, and I believe CED has
14 been -- has not done that in anticipation of the sale.
15 A couple has visited Newington yesterday, because
16 Michael hadn't seen the facility. And, the GE Regional
17 Manager happened to be there, and the first thing he
18 asked me about was extending the agreement. So, it's
19 been -- I think it's been a mutually beneficial
20 arrangement. And, GE is as anxious to stay there as we
21 are to keep them. There are some things we want to do
22 to better align their incentives with the current
23 market, but we see no opportunity -- we're not going to
24 take the opportunity to exit that agreement, GE doesn't

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[WITNESS PANEL: Wright|Thompson]

1 want to.

2 Q. And, my last question is for Ms. Wright, going back to
3 IFM and their finances. You filed a data response,
4 which is the subject of a protective order with the
5 Committee, which contain some financial information
6 regarding IFM. That financial information goes back to
7 June of last year. Is there any reason why this
8 Committee should not be confident in relying on that
9 financial information?

10 A. (Wright) No. In fact, I have an update in terms of
11 what the numbers look like at 31 December '07. And,
12 without disclosing those numbers, what I can assure the
13 Committee of is an improvement of those numbers. So,
14 there's been probably around a 12 to 13 percent
15 increase in the underlying asset values, which
16 obviously plays out in terms of the financial
17 statements. So, I can assure the Committee that there
18 has been improvement in those numbers.

19 Q. And, I just didn't understand what you said, "12 or
20 13 percent"?

21 A. (Wright) Yes.

22 MR. IACOPINO: Thank you.

23 BY CHAIRMAN BURACK:

24 Q. And, if I may inquire further along these lines, and if

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[WITNESS PANEL: Wright|Thompson]

1 this is too sensitive and we need to do this in some
2 kind of an in camera session, please let me know.
3 There has been a significant increase over time in the
4 -- both in the, basically, the value of the
5 investments, as well as, well, basically a change in
6 the fair value of the investments from '06 to '07. Can
7 you help us understand, in general terms, what accounts
8 for that? Is it just additional acquisitions or is
9 there some other aspect that would account for that?
10 A. (Wright) Okay. Well, it's a combination of a number of
11 things. One is the portfolio getting bigger, in terms
12 additional acquisitions, and, obviously, the market
13 value that that adds to the financials. Two is the
14 capital appreciation on those assets themselves, and we
15 have those assets independently valued. So, on an
16 annual basis, at a minimum, and now, actually, with the
17 new fund, we're turning to a quarterly basis, we
18 appoint external values that mainly come from the big
19 accounting firms to value the portfolio of assets. So,
20 capital appreciation is another factor. And, probably
21 the third factor is obviously, you know, the cash that
22 these assets are yielding.

23 CHAIRMAN BURACK: Thank you. That's
24 very helpful. Are there other questions on any of these

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[WITNESS PANEL: Wright|Thompson]

1 issues or matters or for any of the witnesses?

2 Mr. Knepper.

3 MR. KNEPPER: I have one, one question.

4 BY MR. KNEPPER:

5 Q. In this reading, and you're acquiring the facility
6 which includes a pipeline, there's an intake to the
7 facility, there's an oil pipeline, and then an electric
8 transmission line out. Who operate those, that part of
9 the -- I assume the GE people do the turbine and
10 operate that? I caught you when you were gone.

11 A. (McTear) Pardon me. I'm sorry.

12 Q. If I'm reading this right, there's an intake natural
13 gas pipeline that you use for a fuel source, there's an
14 oil line that comes in, and there's an electric
15 transmission line out. Who operates that? What
16 operating personnel? Is that the same, GE, or is that
17 --

18 A. (McTear) GE operates the switch yard.

19 Q. Okay.

20 A. (McTear) Sprague operates the oil line. It's a
21 dedicated oil line.

22 Q. Yes.

23 A. (McTear) Single purpose. The gas intake system is
24 operated, on the transfer side, by General Electric.

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[WITNESS PANEL: Wright|Thompson]

1 There's a gas reheating system that's part of that
2 intake system, and that's also operated by General
3 Electric.

4 MR. KNEPPER: Okay. Thank you.

5 CHAIRMAN BURACK: Another matter, I
6 believe that there may have been a request, Attorney
7 Needleman, through Attorney Iacopino, for additional
8 information relating to the environmental record of
9 Pacific Hydro. That information was not included in the
10 earlier submittals. Do you have information responsive to
11 such a request?

12 MR. NEEDLEMAN: We can speak to that.

13 WITNESS THOMPSON: Yes, we received the
14 request on Wednesday, and we've endeavored to get some
15 information in relation to Pac Hydro. I think, in the
16 submission, just for everyone's benefit, Pac Hydro is a
17 100 percent owned investment of ours. It's a renewable
18 energy company, 1,800 -- 1,800 megawatts throughout
19 Australia, Asia-Pacific, and Latin America. We've made
20 inquiries of the company. And, based on those inquiries,
21 there's been no -- there's been no compliance issue or
22 environmental compliance issues at the company itself.
23 The company has a very strong environmental policy. It
24 has a Risk & Sustainability Committee, which is a board

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[WITNESS PANEL: Wright|Thompson]

1 committee, which has been set up to monitor environmental
2 compliance. There's an environmental management system in
3 place. They have been getting audits done on a regular
4 basis. My understanding is those audits have all been
5 very clean, certainly been fairly clean. To the extent
6 there's been any issues identified, have been found out
7 very quickly and very aggressively. So, I mean, it's
8 fundamental to Pacific Hydro's general philosophy, that
9 they're a green company, and that's what they do.

10 BY MR. IACOPINO:

11 Q. You represent, though, that Pacific Hydro is going to
12 be the model for the governance of NAEA. Is that still
13 the case?

14 A. (Thompson) That is absolutely the case. When we put in
15 place the structure, Pacific Hydro, it's worked very
16 well, and is exactly the model that we intend to
17 replicate with NAEA.

18 MR. IACOPINO: Thank you.

19 CHAIRMAN BURACK: Are there any other
20 questions at this time?

21 (No verbal response)

22 CHAIRMAN BURACK: Attorney Pfundstein or
23 Attorney Needleman, is there anything else you would like
24 to submit for the record, any other information you'd like

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[WITNESS PANEL: Wright|Thompson]

1 to have us consider?

2 MR. NEEDLEMAN: Just a request for one
3 point of clarification. You had asked earlier for us to
4 submit information about the 40 pension funds, and
5 Attorney Iacopino indicated he might be able to get that
6 on the website. Would you like us to submit it or can you
7 get it on the website?

8 MR. IACOPINO: If you want to have
9 Ms. Wright or Mr. Thompson look at what I have, and tell
10 me if that's accurate? I suppose that's the easiest way
11 to do it, and it will save you some time.

12 WITNESS WRIGHT: Yes. Thank you.
13 That's fine. Thank you.

14 MR. NEEDLEMAN: Do these represent the
15 40 pensions plans?

16 WITNESS WRIGHT: They do.

17 MR. IACOPINO: Why don't we have those
18 marked.

19 CHAIRMAN BURACK: Yes, we will mark this
20 as "Exhibit 5". And, this is some information obtained
21 from the Internet website for at least IFM, I believe?

22 MR. IACOPINO: IFS.

23 CHAIRMAN BURACK: IFS, I'm sorry. And,
24 this will be marked as "Exhibit 5".

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[WITNESS PANEL: Wright|Thompson]

1 (The document, as described, was
2 herewith marked as Exhibit 5 for
3 identification.)

4 WITNESS WRIGHT: As a point of
5 clarification, IFS is IFM's parent company.

6 CHAIRMAN BURACK: Attorney Pfundstein,
7 did you want to make any kind of a closing statement?

8 MR. PFUNDSTEIN: I don't think that's
9 necessary, Mr. Chairman. Thank you.

10 CHAIRMAN BURACK: Thank you.
11 Mr. Needleman, anything further?

12 MR. NEEDLEMAN: Nothing. Thank you.

13 CHAIRMAN BURACK: Okay. Thank you.
14 Okay. We are going to now close this portion of the
15 hearing. And, I think we will now proceed to discuss this
16 matter and see if there is a motion that anybody might
17 wish to make? Mr. Chairman.

18 VICE CHAIRMAN GETZ: I would move
19 approval of the transfer of membership interests, and I
20 would like to discuss that, the reason for my motion, if I
21 can get a second.

22 CHAIRMAN BURACK: Is there a second to
23 the motion?

24 CMSR. MORRISON: I second.

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1 CHAIRMAN BURACK: Second by
2 Mr. Morrison. Okay. Mr. Getz.

3 VICE CHAIRMAN GETZ: In looking at the,
4 for a precedent for a transfer, to the AES Londonderry
5 decision and order of the Committee in docket 2004-01, it
6 speaks to the financial, technical, and managerial
7 capability of the new interests in operating the project
8 as being the standard. And, in light of that standard, it
9 appears to me that there is financial, technical, and
10 managerial ability for the new interest to operate the
11 facility. And, I wanted to specifically speak to four
12 financial items that, based on representations today, that
13 give me confidence about that conclusion.

14 First is the improved debt-to-equity
15 ratio with the extra injection of equity up to the amount
16 of \$750 million into the whole transaction, which will be
17 proportionally attributed to the NEL facility. Also, the
18 fact that there is the representation of an investment
19 grade rating applicable to this project. Also, the
20 representation concerning the 350 to 400 basis points
21 premium above prime, I believe it was, by Barclay, that I
22 understand to be consistent with current market
23 conditions. And, the presence of the tolling agreement
24 with Shell that reduces exposure to fuel risks.

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1 And, for those four reasons, I feel
2 comfortable about the financial viability of the project.

3 CHAIRMAN BURACK: Thank you. Is there
4 further discussion of the motion? Again, we'll discuss
5 the motion here, and then we can have further discussions
6 about actual -- the procedural matters of getting a
7 written order issued, drafted and issued. So, further
8 discussion with respect to the motion itself?

9 (No verbal response)

10 CHAIRMAN BURACK: I think it would be
11 helpful for us to recognize that there are, based on the
12 test as Chairman Getz has outlined it, there really are
13 three aspects here; one is financial, one is managerial
14 and one is technical. Chairman Getz has identified a
15 number of the financial aspects that would support
16 approval of this Application. But perhaps we should have
17 a little discussion about the managerial and technical
18 aspects of the Applicant's materials. Mr. Stewart.

19 DIR. STEWART: I think it's significant
20 that General Electric is going to continue as the
21 operating, you know, entity at the plant. From all
22 accounts, the operation has been satisfactory over the
23 history of the operation of the plant, and that remains
24 unchanged with the change in ownership. So, I think, from

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1 a technical or an operational perspective, the transaction
2 is satisfactory.

3 CHAIRMAN BURACK: Other comments or
4 thoughts? Director Ignatius.

5 DIR. IGNATIUS: Just to build on
6 Director Stewart's comments, I think the continuity is
7 really helpful here. The plant has been well run. And,
8 it doesn't sound as though there's reason that any of that
9 would change, either in terms of the personnel or the
10 philosophies behind the operation of the plant. How it's
11 dispatched, what its bidding strategy is, that may well
12 change. Even with the same set of owners can change,
13 because that's an always changing market. And, how it
14 best fits the market niche remains to be seen. But I
15 think the steps taken to try to ensure as much continuity
16 will be helpful for plant operation and for the community
17 that this is a significant part of. And, so, I'm
18 comfortable with the transaction from that perspective as
19 well.

20 CHAIRMAN BURACK: Other thoughts or
21 comments?

22 (No verbal response)

23 CHAIRMAN BURACK: Very good. If there
24 are no further thoughts or comments with respect to the

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1 motion, we will have a vote on the motion. All in favor,
2 please say "aye"?

3 (Multiple members indicating "aye".)

4 CHAIRMAN BURACK: Any opposed?

5 (No verbal response)

6 CHAIRMAN BURACK: Any abstentions?

7 (No verbal response)

8 CHAIRMAN BURACK: Okay. Let the record
9 reflect that the motion is approved. So, now we will
10 proceed to have a discussion about how we're going to get
11 an order prepared and circulated and executed. I would
12 suggest that we will instruct our counsel to prepare a
13 draft order reflecting our deliberations here today, the
14 testimony that we've heard, the factors that we have
15 considered, and including everything in the documents that
16 have been submitted. Circulate that for review by the
17 Committee. And, that we would then proceed, I think we
18 can do this, to circulate it for final execution without
19 our having to reconvene for a subsequent meeting. Is
20 there any thoughts or questions about that?

21 (No verbal response)

22 CHAIRMAN BURACK: Okay. Michael, any
23 thoughts as to timing on this?

24 MR. IACOPINO: Actually, I have a

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1 question, just for directions for the order, Mr. Chairman.
2 It's my understanding you wish me to address in the order
3 the procedural history of the case, the standard of
4 review, and then the financial matters which were raised
5 by Mr. Getz, as well as the GE contract, the fact that the
6 Application indicates that IFM is not a stranger in this
7 area of investment, and, in fact, has invested in other
8 similar energy entities. To address they're additional
9 resources that they have through the acquisition of the
10 operating company and CEEMI, and to address their
11 environmental compliance histories, both for the European
12 companies, the companies that they mention in their
13 Application, and Pacific Hydro, all has factors with
14 respect to their managerial and technical capabilities.
15 Am I correct in understanding that those things should be
16 addressed in the order?

17 CHAIRMAN BURACK: I think that's a fair
18 understanding. Are there any other matters that any
19 Committee members would wish to see addressed in the order
20 itself?

21 (No verbal response)

22 CHAIRMAN BURACK: Okay. Very good.

23 MR. IACOPINO: Then, in terms of timing,
24 I can probably have a completed order to you, as Chairman,

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1 within seven to ten days. I have some thoughts already on
2 paper that I need to amend a small amount from our hearing
3 today. So, probably by the end of next week, actually.

4 CHAIRMAN BURACK: Okay. So, I think,
5 realistically, what we'll be looking at is having an order
6 that we would be ready to issue in final probably shortly
7 before the beginning of the following week, I don't have a
8 calendar in front of me, probably looking at somewhere
9 between the -- today's the 18th. So, what we would be
10 hoping to do would be to have a final order signed and
11 issued sometime between the 28th and the 30th of April, I
12 think is probably our schedule.

13 DIR. IGNATIUS: Chairman, just in
14 looking, I saw that the 28th I had listed as a hearing in
15 this case. Was that the initial --

16 CHAIRMAN BURACK: The initial date set
17 for this hearing had been the 28th, we were able to
18 advance the date by ten days, recognizing that there were
19 no intervenors, and all the information that had been
20 requested had been promptly submitted.

21 DIR. IGNATIUS: Thank you.

22 CHAIRMAN BURACK: So, we do not have a
23 hearing scheduled at this time for the 28th. Okay. We
24 will now entertain a motion to adjourn this hearing, which

1 is Item 1 on today's agenda for the Site Evaluation
2 Committee.

3 DIR. IGNATIUS: So moved.

4 CHAIRMAN BURACK: Motion by Director
5 Ignatius. Is there a second?

6 MR. DUPEE: Second.

7 CHAIRMAN BURACK: Second by Mr. Dupee.
8 All in favor?

9 (Multiple members indicating "aye".)

10 CHAIRMAN BURACK: Any opposed?

11 (No verbal response)

12 CHAIRMAN BURACK: Thank you. We stand
13 adjourned.

14 MR. NEEDLEMAN: Thank you.

15 MS. WRIGHT: Thank you.

16 CHAIRMAN BURACK: Thank you all very
17 much. Congratulations.

18 MR. PFUNDSTEIN: Thank you, Mr.
19 Chairman.

20 (Hearing adjourned at 11:22 a.m.)

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